

EXHIBIT E

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MATTHEW SPERGL
PAUL T. CUNLEY
ROBERT A. BENJAMIN*† ALSO ADMITTED IN IL
* ALSO ADMITTED IN ME
† ALSO ADMITTED IN DC
† ALSO ADMITTED IN CT
* ALSO ADMITTED IN MA
* ALSO ADMITTED IN TX
* ADMITTED IN FL ONLY
* ADMITTED IN NJ ONLY
* ADMITTED IN CA ONLY
* ADMITTED IN NY & NJ ONLY
* ADMITTED IN CA, VA, DC ONLY
* ADMITTED AT LAW
* ADMITTED IN ENGLAND & WALES

March 1, 2006

VIA FEDERAL EXPRESSPam Sylwestrzak
Senior Vice President
Marsh USA, Inc.
500 West Monroe Street
Chicago, IL 60661-3630Re: Insured : Refco, Inc.
Policy No. : RNN 506300
Our File : 481.001

Dear Pam:

As you know, this office represents AXIS US Insurance ("Axis") in connection with the captioned Insureds and excess directors and officers liability insurance policy. Your office has requested, on behalf of the Insureds, that Axis issue and deliver that policy referenced in the August 11, 2005 Policy Binder previously issued by Axis. Accordingly, we now enclose Axis Policy No. RNN 506300 (the "Policy"). Please disseminate this to all Insureds.

Please note and communicate to all Insureds that in issuing and delivering this Policy, Axis reserves all rights under the Policy, in equity and at law, including the right to rescind the Policy based on material misrepresentations made to Axis. The issuance and delivery of the enclosed Policy by Axis should not be interpreted as a ratification of the existence of a valid insurance contract.

NEW YORK CITY OFFICE
99 PARK AVENUE
NEW YORK, NEW YORK 10016
TELEPHONE: 212-980-9600
FACSIMILE: 212-980-9291

LONG ISLAND OFFICE
1305 FRANKLIN AVENUE
GARDEN CITY, NEW YORK 11530
TELEPHONE: 516-248-6000
FACSIMILE: 516-248-0677

CALIFORNIA OFFICE
CORPORATE CENTER AT MALIBU CANYON
26635 WEST AGOURA ROAD
CALABASAS, CALIFORNIA 91302
TELEPHONE: 818-880-0992
FACSIMILE: 818-880-0993

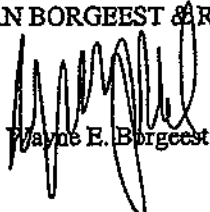
NEW JERSEY OFFICE
9 CAMPUS DRIVE
PARLISAPANT, NEW JERSEY 07054
TELEPHONE: 973-451-9600
FACSIMILE: 973-451-0150

By issuing the Policy, Axis does not intend to waive any rights, privileges or defenses available to Axis under the Policy, at law, or in equity, all of which are expressly reserved.

We will be providing a more detailed coverage position regarding the many matters that have been submitted for coverage. In the interim, please do not hesitate to contact the undersigned with any questions.

Very truly yours,

KAUFMAN BERGEEST & RYAN LLP



Wayne E. Borgeest

Enclosure

KAUFMAN BERGEEST & RYAN LLP



SECUREXCESS DECLARATIONS

SUBJECT TO THE PROVISIONS OF THE UNDERLYING INSURANCE, THIS POLICY MAY ONLY APPLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. THE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENT AMOUNTS SHALL BE REDUCED AND MAY BE TOTALLY EXHAUSTED BY PAYMENT OF DEFENSE COSTS. PLEASE READ THIS POLICY CAREFULLY.

| | | | |
|--|--|--|--|
| COMPANY: Axis Reinsurance Company | | POLICY NUMBER: RNN 506300 | |
| Item 1. Policyholder: Refco, Inc. 550 West Jackson Boulevard Suite 1300 Chicago, IL 60661 | | Item 2. Policy Period: a. Inception Date: <u>August 11, 2005</u> b. Expiration Date: <u>August 11, 2006</u> Both dates at 12:01 a.m. at the address listed in Item 1 | |
| Item 3. Limits of Liability (Inclusive of defense costs): a. Each Claim \$ <u>10,000,000</u> b. Maximum aggregate Limit of Liability for all Claim(s) During the Policy Period of all Insurance Products \$ <u>10,000,000</u> | | | |
| Item 4. Underlying Insurance and Insurance Products: See Endorsement No. 1 | | | |
| Item 5. Endorsements Attached at Inception: SE 1000, SE 1300, SE 0522, SE 1010, MU 1032, Manuscript #8 | | | |
| Item 6. Notices to Insurer: <u>Notice of Claim(s) To Be Sent To:</u> Axis Financial Insurance Solutions Claims Address: Connell Corporate Park Three Connell Drive P.O. Box 357 Berkeley Heights, NJ 07922-0357 | | <u>All Other Notices To Be Sent To:</u> Axis Financial Insurance Solutions Address: Connell Corporate Park Three Connell Drive P.O. Box 357 Berkeley Heights, NJ 07922-0357 | |
| Item 7. Pending and Prior Claim Date: <u>06/04/04</u> | | Item 8. Terrorism Coverage Premium: <u>\$10,000</u> | |

The Insurer has caused this Policy to be signed and attested by its authorized officers, but it shall not be valid unless also signed by another duly authorized representative of the Insurer.

David Lubac
Authorized Representative

9/14/05
Date

Kevin D. McFean

Secretary

Michael E. Moniel

President

SECUREXCESS POLICY

In consideration of the payment of the premium, and in reliance on all statements made in the application(s) for this Policy and the Underlying Insurance and all information provided to the Insurer and any or all of the Underlying Insurers, and subject to the provisions of this Policy, the Insurer and the Policyholder, on its own behalf and on behalf of all Insureds, agree as follows.

I. INSURING AGREEMENT

With respect to each Insurance Product, the Insurer shall provide the Insureds with insurance during the Policy Period excess of all applicable Underlying Insurance. Except as specifically set forth in the provisions of this Policy, the insurance afforded hereunder shall apply in conformance with the provisions of the applicable Primary Policy and, to the extent coverage is further limited or restricted thereby, to any other applicable Underlying Insurance. In no event shall this Policy grant broader coverage than would be provided by the most restrictive policy constituting part of the applicable Underlying Insurance.

The insurance afforded under this Policy shall apply only after all applicable Underlying Insurance with respect to an Insurance Product has been exhausted by actual payment under such Underlying Insurance, and shall only pay excess of any retention or deductible amounts provided in the Primary Policy and other exhausted Underlying Insurance.

II. DEFINITIONS

- A. **Claim(s)** means the event(s) which take place during the Policy Period and which trigger(s) coverage under the insuring agreement(s) of the Underlying Insurance.
- B. **Insurance Product** means each separate type of insurance identified as an "Insurance Product" in Endorsement No. 1 to this Policy.
- C. **Insured(s)** means any person(s) or entity(ies) that may be entitled to coverage under the Primary Policy at its inception.
- D. **Insurer** means the company identified as "Insurer" in the Declarations.
- E. **Policy Period** means the period from the inception date to the expiration date of this Policy stated in Item 2, in the Declarations, or its earlier cancellation or termination date, if any.
- F. **Policyholder** means the person(s) or entity(ies) identified in Item 1, in the Declarations.
- G. **Primary Policy** means the specific policy identified as the "Primary Policy" under the applicable Insurance Product listed in Endorsement No. 1 to this Policy.
- H. **Sublimit** means any Underlying Limits which:
 - 1. applies only to a particular grant of coverage under such Underlying Insurance; and
 - 2. reduces and is part of the otherwise applicable limits of liability of such Underlying Insurance set forth in Item 4 of the Declarations.
- I. **Underlying Insurance** means each insurance policy which constitutes all or part of an Insurance Product, as scheduled in Endorsement No. 1 to this Policy.
- J. **Underlying Insurers** means any or all of the companies who issued the policies of Underlying Insurance.
- K. **Underlying Limits** means, with respect to each Insurance Product, an amount equal to the aggregate of all limits of liability for each Insurance Product stated in Endorsement No. 1 to this Policy, plus the

uninsured retention or deductible, if any, applicable to the **Primary Policy** under such **Insurance Product**.

III. CONDITIONS OF COVERAGE

- A. For purposes of determining when insurance under this Policy shall attach and the limitations under which such insurance shall apply:
1. All of the **Underlying Insurance** in effect as of the inception date of the **Policy Period** shall be maintained in full effect with solvent insurers throughout the **Policy Period** except for any reduction or exhaustion of the **Underlying Limits** as provided in Section IV. below; and
 2. All **Insureds** shall comply fully with all of the provisions of this Policy.
- B. As a condition precedent to coverage under this Policy, the **Insured** shall give to the **Insurer** as soon as practicable, but in no event later than thirty (30) days thereafter, written notice and the full particulars of i) the exhaustion of the aggregate limit of liability of any **Underlying Insurance**, ii) any **Underlying Insurance** not being maintained in full effect during the **Policy Period**, or iii) an **Underlying Insurer** becoming subject to a receivership, liquidation, dissolution, rehabilitation or similar proceeding or being taken over by any regulatory authority.
- C. If during the **Policy Period** the provisions of the **Primary Policy** are changed in any manner, as a condition precedent to coverage under this Policy, the **Insured** shall give written notice to the **Insurer** of the full particulars of such change as soon as practicable but in no event later than thirty (30) days following the effective date of such change. No amendment to any **Primary Policy** or **Underlying Insurance** during the **Policy Period** shall be effective in broadening or extending the coverage afforded by this Policy or extending or increasing the limits of liability afforded by this Policy unless the **Insurer** so agrees in writing. The **Insurer** may, in its sole discretion, condition its agreement to follow any changes to the **Primary Policy** or the **Underlying Insurance** on the **Insured** paying any additional premium required by the **Insurer** for such change.

As soon as practicable, but in no event later than thirty (30) days thereafter, the **Policyholder** must give the **Insurer** written notice of any additional or return premiums charged or allowed in connection with any **Underlying Insurance**.

IV. REDUCTION OR EXHAUSTION OF UNDERLYING LIMITS

- A. If the **Underlying Limits** are partially reduced solely due to actual payment under the **Underlying Insurance**, this Policy shall continue to apply as excess insurance over the remaining **Underlying Limits**.
- B. If the **Underlying Limits** are wholly exhausted solely due to actual payment under the **Underlying Insurance**, this Policy shall continue to apply as primary insurance with respect to the applicable **Insurance Product(s)** and the retention or deductible, if any, applicable under the **Primary Policy(ies)** shall apply under this Policy.
- C. If any **Underlying Limits** are subject to a Sublimit then coverage hereunder shall not apply to any **Claim** which is subject to such Sublimit, provided however, that the **Underlying Limit** shall be recognized hereunder as depleted to the extent of any payment of such **Claim** subject to such Sublimit.

V. LIMITS OF LIABILITY

- A. The amount stated in Item 3.a. in the **Declarations** shall be the maximum limit of the **Insurer's** liability for each **Claim** under the applicable **Primary Policy**, and shall be the maximum amount payable by the **Insurer** under this Policy for a single **Claim**, which amount shall be part of, and not in addition to, the amount stated in Item 3.b. in the **Declarations**.

- B. The amount stated in Item 3.b. in the Declarations shall be the maximum aggregate amount payable by the Insurer under this Policy with respect to all Claims during the Policy Period for all Insurance Products.
- C. This Policy does not provide coverage for any Claim not covered by the Underlying Insurance, and shall drop down only to the extent that payment is not made under the Underlying Insurance solely by reason of exhaustion of the Underlying Insurance through payments thereunder, and shall not drop down for any other reason. If any Underlying Insurer fails to make payments under such Underlying Insurance for any reason whatsoever, including without limitation the insolvency of such Underlying Insurer, then the Insureds shall be deemed to have retained any such amounts which are not so paid. If the Underlying Insurance is not so maintained, the Insurer shall not be liable under this Policy to a greater extent than it would have been had such Underlying Insurance been so maintained.
- D. Payment by the Insurer of any amount, including but not limited to defense costs, shall reduce the limits of liability available under this Policy.

VI. SETTLEMENTS AND DEFENSE

- A. No Insured under this Policy may, without the Insurer's prior written consent, which consent shall not be unreasonably withheld, admit liability for or settle any matter for which insurance may be sought under this Policy.
- B. The Insurer may, at its sole discretion, elect to participate in the investigation, defense and/or settlement of any claim under this Policy, regardless of whether the applicable Underlying Insurance has been exhausted.
- C. The Insured, and not the Insurer, has the duty to defend all Claims under this Policy.

VII. SUBROGATION

- A. In the event of payment under this Policy, the Insurer shall be subrogated to all rights of recovery of each and all Insureds against any person or organization, and the Insureds shall do whatever is necessary to secure those rights to the satisfaction of the Insurer, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of such Insureds.
- B. Any amount recovered after payment under this Policy and any Underlying Insurance policies shall be apportioned among the Insurer and the Underlying Insurers net of the expense of such recovery in the reverse order of actual payment. The expenses attendant to such recovery shall be apportioned among those benefiting from the recovery in proportion to the amount of benefit to each party.

VIII. AUTHORIZATION

Except as stated in paragraph IX.A. below, the Policyholder shall be the sole agent of all Insureds with respect to all matters, including but not limited to giving and receiving notices and other communications, effecting or accepting any endorsements to or notices of cancellation of this Policy, the payment of premium and the receipt of any return premiums.

IX. NOTICE

- A. With respect to any Claim, situation that could give rise to a Claim, or other matter as to which insurance may be sought under this Policy, the Policyholder or any Insured must give the Insurer written notice contemporaneously with and in the identical manner required by the applicable Primary Policy.
- B. All notices under this Policy shall be sent to the Insurer at the address set forth in Item 6. in the Declarations.

X. MODIFICATION, CANCELLATION AND NONRENEWAL

- A.** No modification of this Policy shall be effective unless made by endorsement signed by an authorized representative of the Insurer.
- B.** The Policyholder may cancel this Policy at any time by written notice stating when thereafter such cancellation is to be effective.
- C.** The Insurer may cancel this Policy only for nonpayment of premium, and only by delivering or mailing to the Policyholder written notice stating when, not less than ten (10) days thereafter, such cancellation shall become effective. The delivery or mailing of such notice shall be sufficient proof thereof and this Policy and the Policy Period shall terminate at the date and hour specified in the notice.
- D.** The Insurer shall refund the unearned premium, computed at the customary short rate, if the Policy is cancelled by the Policyholder.
- E.** The Insurer shall have no obligation to renew this Policy upon its expiration. If the Insurer decides not to renew this Policy, the Insurer shall provide written notice to the Policyholder by messenger, express delivery or first class mail at least sixty (60) days prior to the expiration of the Policy.
- F.** Notwithstanding anything to the contrary set forth elsewhere in the Policy, in the event that any Underlying Insurance is rescinded by agreement or legal process for fraud or other material misrepresentation by the Policyholder or any of the Insureds, then this Policy shall be deemed to be automatically and immediately rescinded, but only with respect to any Insurance Product containing such rescinded Underlying Insurance.

XI. EXCLUSIONS

The Insurer shall not be liable for any amount in any Claim taking place during the Policy Period and arising under any Insurance Product, which is based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:

- A.** Any demand, suit or other proceeding pending, or order, decree or judgment entered, against any Insured on or prior to the Pending or Prior Claim Date set forth in Item 7 of the Declarations or any wrongful act, fact, circumstance or situation underlying or alleged therein; or
- B.** Any other wrongful act, fact, circumstance or situation whenever occurring, which together with a wrongful act, fact, circumstance or situation described in (a) above are causally or logically interrelated by a common nexus.

Endorsement No. 1

Effective date of this endorsement: 12:01 a.m. on: August 11, 2005

To be attached to and form part of Policy Number: RNN 506300

Issued to: Refco, Inc.

By: Axis Reinsurance Company

SCHEDULE OF UNDERLYING INSURANCE AND INSURANCE PRODUCTS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies Insurance provided under the following:

SECUREXCESS POLICY

The Schedule of Underlying Insurance and Insurance Products is as follows:

A. Insurance Product: Directors and Officers Liability

1. Primary Policy

| <u>Insurer</u> | <u>Policy Number</u> | <u>Limits</u> | <u>Policy Period</u> |
|----------------|----------------------|---------------|----------------------|
| HCC | 24-MGU-05-A10821 | \$10,000,000 | 08/11/05-08/11/06 |

2. Other Underlying Policies

| <u>Insurer</u> | <u>Policy Number</u> | <u>Limits</u> | <u>Policy Period</u> |
|----------------|----------------------|---------------|----------------------|
| Lexington | 1620924 | \$7,500,000 | 08/11/05-08/11/06 |

All other provisions remain unchanged.


Authorized Representative

Date

9/11/05

Endorsement No. 2

Effective date of this endorsement: 12:01 a.m. on: August 11, 2005

To be attached to and form part of Policy Number: RNN 505300

Issued to: Refco, Inc.

By: Axis Reinsurance Company

IMPORTANT NOTICE TO ALL ILLINOIS POLICYHOLDERS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

SECUREXCESS POLICY

In the event you need to contact someone about this Policy for any reason, please contact us at:

Axis Reinsurance Company
Connell Corporate Park
Three Connell Drive
P.O. Box 357
Berkeley Heights, NJ 07822-0357
Fax No.: 1 (908) 288-5800

If you have been unable to contact or obtain satisfaction from the Insurer, you may contact the Illinois Department of Insurance to obtain information or make a complaint at:

Illinois Department of Insurance
Consumer Division of Public
Services Section
Springfield, Illinois 62767

Endorsement No. 3

Effective date of this endorsement: 12:01 a.m. on: August 11, 2005

To be attached to and form part of Policy Number: RNN 506300

Issued to: Refco, Inc.

By: Axis Reinsurance Company

ILLINOIS AMENDATORY ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

SECUREXCESS POLICY

1. Section X., **MODIFICATION, CANCELLATION AND NONRENEWAL**, paragraph C. is amended by deleting the words "delivering or" in the first sentence and the words "delivery or" in the second sentence of that provision.
2. Section X., **MODIFICATION, CANCELLATION AND NONRENEWAL**, paragraph F. is deleted. Provided, however, the Insureds and the Insurer hereby agree that the Insurer shall have the same rights under law to rescission that it had if Section X. F. had not been included in the Policy or deleted by this endorsement.

All other provisions remain unchanged.

Sean Lukas
Authorized Representative

9/11/05
Date

Endorsement No. 4

Effective date of this endorsement: 12:01 a.m. on: August 11, 2005

To be attached to and form part of Policy Number: RNN 506300

Issued to: Refco, Inc.

By: Axis Reinsurance Company

PRIOR NOTICE EXCLUSION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

SECUREXCESS POLICY

In consideration of the premium charged, it is agreed that the Insurer shall not be liable for any amount from any Claim which is based upon, arising from, or attributable to or in consequence of any fact, circumstance or situation which has been the subject of any written notice given under any other policy of Insurance.

All other provisions remain unchanged.

Sean Luker
Authorized Representative

8/11/05
Date

SE1010 0203

Endorsement No. 5

Effective date of this endorsement: 12:01 a.m. on: August 11, 2005

To be attached to and form part of Policy Number: RNN 506300

Issued to: Refco, Inc.

By: Axis Reinsurance Company

MANUSCRIPT APPLICATION ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

SECUREXCESS POLICY

In consideration of the premium charged, it is agreed by the Insurer and Insureds that the application or proposal signed *February 8, 2005* and submitted to *Axis Reinsurance Company* on *U.S. Specialty Insurance Company's* form shall be accepted by the Insurer as the Application for this Policy.

Any and all references to an Application or application in this Policy shall mean the application or proposal described above. The Insurer has relied upon all statements, warranties and other information and documents contained in or submitted with such other application or proposal as if they were submitted directly to Insurer using its own Application form.

All other provisions remain unchanged.

Sean Tubac
Authorized Representative

9/11/05
Date

Endorsement No. 6

Effective date of this endorsement: 12:01 a.m. on: August 11, 2005

To be attached to and form part of Policy Number: RNN 508300

Issued to: Refco, Inc.

By: Axis Reinsurance Company

Knowledge Exclusion

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

SECUREXCESS POLICY

In consideration of the premium charged, it is agreed that this Policy does not respond to Claims based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, or event, which as of the inception date of the Policy Period, any Insured had knowledge and had reason to suppose might give rise to a Claim that would fall within the scope of the insurance afforded by this Policy.

All other provisions remain unchanged.

Sean Tubee
Authorized Representative

9/11/05
Date

EXHIBIT F

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7CJAAMAGP Plea
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

07 SD 312 (RLE)

SANTO C. MAGGIO,

Defendant.

New York, N.Y.
December 19, 2007
11:30 a.m.

Before:

HON. RONALD L. ELLIS,

Magistrate Judge

APPEARANCES

JAMES B. COMEY
United States Attorney for the
Southern District of New York
NEIL BAROFSKY
CHRISTOPHER GARCIA
Assistant United States Attorney

PAUL SHECHTMAN
Attorney for Defendant Maggio

SCOTT E. HERSHMAN
Attorney for Defendant Maggio

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

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7CJAAMAGP Plea

(Case called)
MR. BAROFSKY: Neil Barofsky and Christopher Garcia
for the government.

Good morning, your Honor.

MR. SCHECTMAN: Paul Shechtman, for Mr. Maggio, with
Scott Hershman, for Mr. Maggio.

THE COURT: Okay. I understand that he is going to be
pleading to an information.

MR. SCHECTMAN: Correct, your Honor.

THE COURT: Has he waived indictment yet?

MR. SCHECTMAN: You have the paperwork. We're ready
to waive.

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7CJAAMAGP2.txt

13 THE COURT: We will do those separately. Treat the
14 waiver as it should be and then I'll consider the taking of the
15 plea.

16 MR. SCHECTMAN: Sounds right.

17 COURTROOM DEPUTY: You are Santo Maggio?

18 THE DEFENDANT: Yes.

19 COURTROOM DEPUTY: Have you signed this waiver of
20 indictment.

21 THE DEFENDANT: Yes.

22 COURTROOM DEPUTY: Before you signed it did you
23 discussion it with your attorney?

24 THE DEFENDANT: Yes.

25 COURTROOM DEPUTY: Did he explain it to you?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

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7CJAAMAGP Plea

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand what you are doing?

3 THE DEFENDANT: Yes.

4 COURTROOM DEPUTY: Do you understand that you are
5 under no obligation to waive indictment?

6 THE DEFENDANT: Yes.

7 COURTROOM DEPUTY: Do you understand that if you do
8 not waive indictment, if the government wants to prosecute you
9 they will have to present this case to a grand jury which may
10 or may not indict you?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you realize by that by signing this
13 waiver of indictment you have given up your right to have this
14 case presented to a grand jury?

15 THE DEFENDANT: Yes, I do.

16 COURTROOM DEPUTY: Have you seen a copy of the
17 information?

18 THE DEFENDANT: Yes, I did.

19 THE COURT: Would you like for me to read it to you?

20 THE DEFENDANT: No.

21 COURTROOM DEPUTY: How do you plead?

22 THE DEFENDANT: Guilty.

23 COURTROOM DEPUTY: The case has already been assigned
24 to Judge Stein.

25 MR. SCHECTMAN: Correct.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

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7CJAAMAGP Plea

1 MR. BAROVSKY: Your Honor, we consent to the defendant
2 being released on his own recognizance.

3 MR. SCHECTMAN: We don't object to that.

4 THE COURT: Technically to the information you are
5 supposed to plead "not guilty".

6 MR. SCHECTMAN: I think that is right and it is my
7 apologies.

8 THE DEFENDANT: I plead not guilty now and then later
9 of guilty.

10 MR. SCHECTMAN: Not guilty at this time, your Honor,
11 but we will be entering a guilty plea.

12 THE COURT: Objection. All right. Now, the actual
13 plea has been referred by Judge Stein; is that it?

14 MR. BAROVSKY: Yes, your Honor.

15 THE COURT: And how many counts in the information?

16 MR. BAROVSKY: Your Honor, there are four counts.

17 THE COURT: What is he pleading to?

7CJAAMAGP2.txt

18 MR. BAROFSKY: All four counts, Judge.
19 THE COURT: Okay. Mr. Maggio, this matter has been
20 referred to me before Judge Stein for the purpose of taking
21 your plea. Did you consent to proceed before a United States
22 magistrate judge on your felony plea allocution?
23 THE DEFENDANT: Yes.
24 THE COURT: Before you signed it did you discuss it
25 with your attorneys?

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1 THE DEFENDANT: Yes, your Honor.
2 THE COURT: Did they explain it to you?
3 THE DEFENDANT: Yes.
4 THE COURT: Do you understand that you have an
5 absolute right to have this proceeding before a United States
6 district judge?
7 THE DEFENDANT: Yes, I do.
8 THE COURT: You are voluntarily proceeding before a
9 United States magistrate judge?
10 THE DEFENDANT: Yes.
11 THE COURT: Mr. Maggio, you are charged in a four
12 count information. Count One of the information charges you,
13 well, conspiracy to commit securities fraud, wire fraud, bank
14 fraud and money laundering and to make false filings with the
15 SEC and material misstatements to auditors in violation of
16 Title 18 U.S.C. Sections 371. This crime carries a maximum
17 sentence of five years imprisonment, a maximum fine which is
18 the greatest of either \$250,000 or twice the gross pecuniary
19 gain derived from the offense or twice the gross pecuniary loss
20 to persons other than yourself as a result of the offense.
21 There is a \$100 special assessment and a term of supervised
22 release of three years.

23 Counts Two and Three of the information charge you
24 with securities fraud in violation of Title 15 U.S.C. Section
25 78 (J) (B) and 78 (F) (F) and Title 17 Code of Federal

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1 Regulations Section 240, 10 (B) (5) and each of those counts
2 carries a maximum sentence of 20 years imprisonment, a maximum
3 fine which is the greatest of either five million dollars or
4 twice the gross pecuniary gain derived from the offense and
5 twice the gross pecuniary loss of persons other than yourself
6 as a result of the offense. Each also has a \$100 special
7 assessment and a term of supervised release of three years.

8 Count four of the information charges you with wire
9 fraud in violation of Title 18 U.S.C. Section 1343 and carries
10 a maximum sentence of 0 years imprisonment, a maximum fine
11 which is the greatest of either \$250,000 or twice the gross
12 pecuniary gain derived from the offense, or twice the gross
13 pecuniary loss to person others than yourself as a result of
14 the offense. It carries a \$100 special assessment and a term
15 of supervised release of three years.

16 A total maximum sentence of incarceration on the
17 information is 65 years imprisonment. In addition to the
18 foregoing the Court must order restitution with respect to the
19 information and in accordance with U.S.C.

20 In addition, if you are sentenced to any period of
21 supervised release and violate the conditions of your
22 supervised release you may be sentenced to all or part of the

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23 supervised release as authorized by statute without any credit
24 for time already served on supervised release.
25 Do you understand that?

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1 THE DEFENDANT: Yes.
2 THE COURT: So you understand these penalties as I've
3 read them to you?
4 THE DEFENDANT: Yes, I do.
5 THE COURT: Have you seen a copy of the information in
6 which the government makes these charges against you?
7 THE DEFENDANT: Yes, I do.
8 THE COURT: Have you discussed it with your attorneys?
9 THE DEFENDANT: Yes, your Honor.
10 THE COURT: Are you prepared to enter a plea today?
11 THE DEFENDANT: Yes, I am.
12 THE COURT: Santo Maggio, how do you plead?
13 THE DEFENDANT: Guilty.
14 THE COURT: Mr. Maggio, before I can recommend that
15 your plea be accepted I must determine that you understand the
16 plea and its consequences, that the plea is voluntary and that
17 there's a factual basis for the plea. For that purpose I must
18 ask you a number of questions and your answers must be under
19 oath. Do you understand that the answers you give under oath
20 may subject you to prosecution for perjury if you do not tell
21 the truth?

22 THE DEFENDANT: Yes, I do.
23 THE COURT: Raise your right hand.
24 (Defendant Santo C. Maggio sworn)
25 THE COURT: Thank you. Please state your full name
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1 for record.
2 THE DEFENDANT: Santo C. Maggio.
3 THE COURT: How far did you go in school?
4 THE DEFENDANT: I finished high school.
5 THE COURT: Are you currently being treated by a
6 doctor or psychiatrist for any reason?
7 THE DEFENDANT: No.
8 THE COURT: Are you currently on any medications which
9 might effect you in being alert for this proceeding?
10 THE DEFENDANT: No.
11 THE COURT: Are you any difficulty seeing, hearing or
12 understanding anything that I am saying?
13 THE DEFENDANT: No.
14 THE COURT: Have you had enough time to discuss with
15 your attorneys how you wish to plead?
16 THE DEFENDANT: Yes.
17 THE COURT: Are you satisfied with your attorneys?
18 THE DEFENDANT: Yes.
19 THE COURT: Do you understand what the government says
20 that you did?
21 THE DEFENDANT: Yes.
22 THE COURT: Do you understand that have you a right to
23 plead not guilty?
24 THE DEFENDANT: Yes.
25 THE COURT: Do you understand that you have a right to

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2 trial by jury on these charges?
3 THE DEFENDANT: Yes.
4 THE COURT: Do you understand that if you are to plead
5 not guilty and go to trial you would be presumed innocent until
6 the government proved your guilt beyond a reasonable doubt?
7 THE DEFENDANT: Yes, I do.
8 THE COURT: Do you understand that if you were to go
9 to trial you would have a number of important constitutional
10 rights including the right to be represented by counsel and to
11 have counsel appointed for you if you cannot afford an
12 attorney?
13 THE DEFENDANT: Yes.
14 THE COURT: Do you understand that at trial you cannot
15 be forced to testify against yourself?
16 THE DEFENDANT: Yes.
17 THE COURT: Do you understand at a trial you would
18 have the right to confront and cross-examine witnesses called
19 by the government?
20 THE DEFENDANT: Yes.
21 THE COURT: Do you understand that at a trial you
22 would have the right to testify yourself and to call witnesses
23 on your behalf and to compel their attendance by subpoena if
24 necessary?
25 THE DEFENDANT: Yes.
THE COURT: Do you understand that if your guilty plea
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1 7CJAAMAGP Plea
2 is accepted there will be no trial of any kind and the only
3 remaining steps in your case will be a presentence report and
4 sentencing by Judge Stein?
5 THE DEFENDANT: Yes.
6 THE COURT: Have you discussed with your attorney the
7 role that the sentencing guidelines play in sentencing?
8 THE DEFENDANT: Yes.
9 THE COURT: Do you understand that the district judge
10 will retain discretion regardless of what calculations there
11 are under the guidelines?
12 THE DEFENDANT: Yes.
13 THE COURT: Do you understand that the calculation
14 under the guidelines will take into account a number of factors
15 including the actual conduct in which you engaged, any victims
16 of the offense, the role that you played in the offense,
17 whether or not you have accepted responsibility for your acts,
18 whether you have any criminal history or whether you have
19 engaged in any obstruction of justice; do you understand that?
20 THE DEFENDANT: Yes.
21 THE COURT: Between now and the date of sentencing the
22 probation department will conduct an investigation and will
23 prepare a presentence report. Your attorney, the government
24 and Judge Stein will receive copies. Both your attorney and
25 the government will have the opportunity to object if they
believe anything in the report is inaccurate; do you understand
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1 7CJAAMAGP Plea
2 that?
3 THE DEFENDANT: Yes.
THE COURT: Do you understand that until the
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4 presentence report is prepared neither your attorney nor the
5 government, nor Judge Stein will be able to determine precisely
6 what range of penalties will be calculated under the
7 guidelines.
8 THE DEFENDANT: Yes.
9 THE COURT: Do you understand that regardless of
10 calculation and the guidelines your sentence cannot exceed the
11 maximums that I advised you of earlier?
12 THE DEFENDANT: Yes.
13 THE COURT: Do you understand that under certain
14 circumstances both you and the government may have the right to
15 appeal the sentence imposed.
16 THE DEFENDANT: Yes.
17 THE COURT: Do you understand that if the sentence is
18 more severe than you expected you will be bound by your guilty
19 plea and will not be permitted to withdraw it?
20 THE DEFENDANT: Yes.
21 THE COURT: You understand that parole has been
22 abolished and that if you are sentenced to any term of
23 imprisonment you will be required to serve the entire term?
24 THE DEFENDANT: Yes.
25 THE COURT: Mr. Maggio, are you a citizen of the
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United States?

1 THE DEFENDANT: Yes, I am.
2 THE COURT: Mr. Maggio, I have been handed up a plea
3 agreement from your case. Have you had an opportunity to
4 review and go over this agreement with your attorneys?
5 THE DEFENDANT: Yes.
6 THE COURT: Do you understand that one of the
7 provisions in the plea agreement is that you admit the
8 forfeiture allegation in the information and that you agree to
9 forfeit to the United States a sum of money equal to two
10 billion, four hundred million dollars?
11 THE DEFENDANT: Yes.
12 THE COURT: That is what it says, right?
13 MR. BAROFSKY: Yes, your Honor, that number is
14 correct.
15 Your Honor, the plea cooperation agreement also
16 provides, however, that in satisfaction of that amount there
17 are certain schedules attached to the plea agreement which the
18 government will accept in satisfaction of that judgment.
19 MR. SCHECTMAN: We don't have quite that much, your
20 Honor.
21 THE COURT: Okay. I thought had I too many zeros
22 myself at first.
23 MR. SCHECTMAN: No, you read it right.
24 THE COURT: That represents the amount of the
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proceedings obtained as a result of the offense; do you
understand that?

1 THE DEFENDANT: Yes.
2 THE COURT: You also understand that any forfeiture
3 would not be treated as satisfaction of any fine, restitution,
4 cause of imprisonment or any other penalty the Court may
5 impose?
6 THE DEFENDANT: Yes.
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9 THE COURT: And as indicated in the agreement, there
10 is a scheduled pay of assets. You have seen the schedule and
11 you have gone over it with your attorneys?
12 THE DEFENDANT: Yes.
13 THE COURT: To make sure that it's accurate?
14 THE DEFENDANT: Yes.
15 MR. SCHECTMAN: Judge, I might point out for the
16 record there is a Schedule B as well, which are assets that are
17 in Mrs.~Maggio's name that are being forfeited as part of the
18 plea and there is a separate agreement that need not concern
19 your Honor in this matter involving Mrs.~Maggio.
20 THE COURT: Is that correct, Mr. Maggio, there is also
21 a schedule B?
22 THE DEFENDANT: Yes.
23 THE COURT: That's Mrs.~Maggio's assets?
24 THE DEFENDANT: Yes.
25 THE COURT: That is also covered by the agreement that
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1 you made with the government?
2 THE DEFENDANT: Yes.
3 THE COURT: You are also understand the agreement
4 provides that you cooperate fully with the United States
5 attorney's office?
6 THE DEFENDANT: Yes.
7 THE COURT: And that in exchange for that cooperation,
8 assuming that the office determines that you have made full and
9 accurate disclosures to them, the government has agreed that it
10 will submit a motion pursuant to Section 5K1.1 of the
11 sentencing guidelines in your favor?
12 THE DEFENDANT: Yes.
13 THE COURT: Do you understand that if for any reason
14 the government determines that it will not file such a motion
15 you will not be allowed to withdraw your plea?
16 THE DEFENDANT: Yes.
17 THE COURT: You understand that even if the government
18 files such a motion sentencing will still be at the sole
19 discretion of the Court?
20 THE DEFENDANT: Yes, I did.
21 THE COURT: Is there anything else in the agreement
22 that I might want to highlight?
23 MR. BAROFSKY: No, your Honor.
24 THE COURT: All right. Other than the representations
25 in this agreement, have any promises been made to you by anyone
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1 to influence you to plead guilty?
2 THE DEFENDANT: No.
3 THE COURT: This constitutes the sole agreement that
4 you have?
5 THE DEFENDANT: Yes.
6 THE COURT: Has anyone promised you a specific
7 sentence if you plead guilty?
8 THE DEFENDANT: No.
9 THE COURT: Has anyone made any threats to you to
10 influence you to plead guilty?
11 THE DEFENDANT: No.
12 THE COURT: Are you making this plea voluntarily of
13 your own freewill and choice?

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14 THE DEFENDANT: Yes, I am.
 15 THE COURT: The elements of the offense is?
 16 MR. BAROFSKY: Your Honor, for Counts One defendant's
 17 is charged with conspiracy. The government would be required
 18 to prove each of the elements beyond a reasonable doubt.
 19 First, that there is an assistance of a an agreement or
 20 understanding to commit one of the objects charged in the
 21 information.
 22 Second, the defendant knowingly became a member of
 23 that agreement or understanding.
 24 And third, that one of the conspirators or
 25 coconspirators or Mr. Maggio knowingly committed at least one
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 1 overt act in furtherance of the conspiracy during its life.
 2 With respect to the securities frauds counts in two
 3 and three, first, the defendant in connection with the purchase
 4 or sale of securities, here the notes that are described in
 5 Count Two and the common stock of Revko that's referenced in
 6 Count Three did one or more of the following: Employed a
 7 devise, scheme or artifice to defraud or made an untrue
 8 statement of a material fact or admitted to state a material
 9 fact which made what was said under the circumstances
 10 misleading or engaged in an act, practice or course of business
 11 that operated or would operate as a fraud or deceit upon a
 12 purchase of a seller for securities.
 13 Second the defendant acted knowingly, willfully with
 14 the intent to defraud.
 15 And third, the defendant used or caused to be used any
 16 means or instruments of transportation or communication in
 17 interstate commerce or use of the mails in furtherance of that
 18 fraudulent conduct.
 19 and with respect to the Count Four wire fraud, first,
 20 that there was a scheme or artifice to defraud that existence
 21 the defendant must have participated in the scheme with the
 22 intent to defraud misrepresentations or omissions must have
 23 related to a material fact, that the scheme was executed to
 24 obtain money or property.
 25 And finally, that in execution of the scheme the
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 1 defendant used or caused to be used interstate wires or that
 2 such use was reasonably foreseeable to him.
 3 THE COURT: Mr. Maggio, did you hear that recitation?
 4 THE DEFENDANT: Yes.
 5 THE COURT: Did you understand that if the government
 6 were to proceed to trial against you it would have the burden
 7 of proving each element for each offense, that is, each count
 8 beyond a reasonable doubt.
 9 THE DEFENDANT: Yes.
 10 THE COURT: Did you commit the offenses for which you
 11 have been charged, Mr. Maggio?
 12 THE DEFENDANT: Yes.
 13 THE COURT: Tell me what you did.
 14 MR. SCHECTMAN: Judge, if it's acceptable to you
 15 Mr. Maggio has written out a statement that I think speaks to
 16 all four crimes.
 17 THE COURT: Considering the complexities here I'll
 18 allow him to read and then if it's not he could fill in the

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19 gaps.

20 THE DEFENDANT: Your Honor, from the late 1990s to
 21 October 2005 I was a senior executive at Revko Ink. During
 22 that period I participated with others to hide the true
 23 financial health of Revko from banks, counter-parties, auditors
 24 and investors. With my knowledge and active participation
 25 Revko's substantial losses were covered up as revenues padded

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Plea

1 and certain operating expenses were moved off its book. Among
 2 the acts I personally engaged in the signing of loan agreements
 3 referencing paragraphs 61-D and 61-P of the indictment.

4 As a result of my conduct and that of my
 5 coconspirators false financial statements were issued to obtain
 6 debt financing from the public including 9 percent senior
 7 subordinated notes referenced in Count Two of the indictment.

8 To consummate the sale of 57 percent of Revko to a
 9 group headed by Thomas H. Lee in 2004 and to obtain \$800
 10 million in bank financing the same year and to effect the Revko
 11 initial public offering in 2005. Moreover, with my knowledge
 12 false financial statements were filed with the SEC including
 13 form 10K referencing Count Four. The mails and interstate
 14 wires were used as part of the fraudulent scheme.

15 I deeply regret my conduct and the harm that it has
 16 caused.

17 THE COURT: First of all, with respect to all of the
 18 activities that you've indicate you participated in it
 19 knowingly?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. Where did this take place.

22 THE DEFENDANT: In New York, New York. Manhattan, New
 23 York.

24 THE COURT: You said coconspirators, so other people
 25 had agreed with you to effectuate this scheme?

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1 THE DEFENDANT: Yes.

2 THE COURT: And the intent of this scheme was to
 3 defraud?

4 THE DEFENDANT: Yes.

5 THE COURT: Now, I know you mentioned the notes and I
 6 think you mentioned the 2005 initial offering that was
 7 addressed to Count Three of the information, that is, whether
 8 or not you had a scheme to defraud people based on the value of
 9 the stock?

10 THE DEFENDANT: Correct, your Honor.

11 THE COURT: Mr. Maggio?

12 THE DEFENDANT: Yes.

13 THE COURT: That did involve false statements?

14 THE DEFENDANT: Yes.

15 THE COURT: False filings that you've indicated?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, you said you used the mails which
 18 interstate -- I mean, you used the mails, a phone? How did you
 19 use --

20 THE DEFENDANT: Yes, used regular mail. We used
 21 Express Mail. We used e-mail all to effect the scheme.

22 THE COURT: You submitted false statements in the
 23 mail?

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24 THE DEFENDANT: False statements, loan agreements as
25 referenced here, yes.

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1 THE COURT: Okay. Any --

2 MR. BAROFSKY: Your Honor, I'll just represent to the
3 court that with respect to Count Four, the wire transmission
4 did in fact originate in the Southern District of New York in
5 Manhattan and was wired outside of the Southern District to
6 Virginia.

7 THE COURT: Anything else?

8 MR. SCHECTMAN: Nothing, your Honor.

9 MR. BAROFSKY: No, your Honor.

10 THE COURT: I am depending on you here. Does any
11 either counsel know of any reason why I should not recommend
12 that this plea not be accepted?

13 MR. BAROFSKY: No, your Honor.

14 MR. SCHECTMAN: No, your Honor.

15 THE COURT: Based on defendant's allocution and the
16 recommendations by the government I find that the defendant
17 understands the nature, the charges and consequences of his
18 guilty plea. I also find that the plea is voluntary and that
19 there is a factual basis for the plea. I, therefore, recommend
20 that the plea be accepted and direct that a presentence report
21 be reaped.

22 Sentencing will take place before Judge Stein on.

23 MR. BAROFSKY: May 9, at 2 p.m.

24 THE COURT: Is there anything else that needs to be
25 addressed today.

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1 MR. BAROVSKY: Not from the government, your Honor.

2 MR. SCHECTMAN: Not from the offense.

3 THE COURT: We are adjourned.

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EXHIBIT G

82FVBENP.txt

1

82FVBENP Plea
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

05 CR 001192 (NRB)

PHILLIP BENNETT,

Defendant.

New York, N.Y.
February 15, 2008
5:40 p.m.

Before:

HON. NAOMI REICE BUCHWALD,

District Judge

APPEARANCES

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
NEIL M. BAROFSKY
CHRISTOPHER L. GARCIA
Assistant United States Attorneys

KRAMER LEVIN NAFTALIS & FRANKEL
Attorneys for Defendant
GARY P. NAFTALIS
DAVID S. FRANKEL
ADAM C. FORD
DARREN A. LAVERNE

ALSO PRESENT: WILLIAM JOHNSON, Postal Inspector
KRIS MOON, Postal Inspector
ANNE RAILTON, Law Student

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82FVBENP Plea

(In open court)
(Case called)
THE DEPUTY CLERK: The case is United States against
Phillip Bennett; docket number 05 CR 1192. Is the government
ready to proceed?
MR. BAROFSKY: Yes. Neil Barofsky for the government.
With me at counsel table, with your Honor's permission, is
Christopher Garcia of our office, our postal inspectors on the
case, William Johnson and Kris Moon, as well as our legal

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 10 intern, Annie Railton, who's been assisting the trial of this
 11 matter. Good evening, your Honor.
 12 MR. GARCIA: Good evening, your Honor.
 13 THE DEPUTY CLERK: Is the defense ready to proceed?
 14 MR. NAFTALIS: Yes, we are. Gary Naftalis for
 15 Mr. Bennett, along with David Frankel.
 16 THE COURT: Mr. Naftalis?
 17 MR. NAFTALIS: Your Honor, we have an application on
 18 behalf of Mr. Bennett to withdraw his plea of not guilty to the
 19 charges in the indictment and to offer to plead guilty to the
 20 charges in the indictment.
 21 THE COURT: All right. Mr. Bennett, would you stand
 22 please. Would you raise your right hand.
 23 (Defendant sworn)
 24 THE COURT: And would you state your full name for me
 25 please.

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82FVBENP Plea
 1 THE DEFENDANT: Phillip Roger Bennett.
 2 THE COURT: And Mr. Bennett, how old are you?
 3 THE DEFENDANT: 59, your Honor.
 4 THE COURT: Why don't you sit down. Mr. Bennett, what
 5 was the highest grade in school that you completed?
 6 THE DEFENDANT: University. Grade, twelfth grade, I
 7 think it is, your Honor.
 8 THE COURT: You have the equivalent of a college
 9 degree.
 10 THE DEFENDANT: Yes, master of arts.
 11 THE COURT: And are you now or have you currently been
 12 under the care of a doctor or psychiatrist?
 13 THE DEFENDANT: No, your Honor.
 14 THE COURT: And have you ever been hospitalized or
 15 treated for alcoholism or narcotics addiction?
 16 THE DEFENDANT: No, your Honor.
 17 THE COURT: Are you under the influence of any drug or
 18 alcohol today?
 19 THE DEFENDANT: I'm not, no, your Honor.
 20 THE COURT: And how are you feeling physically today?
 21 THE DEFENDANT: Fine, your Honor. Thank you.
 22 THE COURT: Mr. Bennett, have you had the opportunity
 23 to review the charges against you and your plea with
 24 Mr. Naftalis and Mr. Frankel and perhaps some other lawyers, as
 25 well?

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82FVBENP Plea
 1 THE DEFENDANT: I have, your Honor, yes.
 2 THE COURT: And have you been satisfied with the
 3 advice and counsel that Messrs. Naftalis and Frankel have given
 4 to you?
 5 THE DEFENDANT: I have, yes.
 6 THE COURT: Are you ready to change your plea at this
 7 time?
 8 THE DEFENDANT: I am, your Honor.
 9 THE COURT: And what is your plea at this time, guilty
 10 or not guilty?
 11 THE DEFENDANT: It's guilty, your Honor.
 12 THE COURT: Mr. Bennett, in order to determine whether
 13 your plea is voluntary and made with a full understanding of
 14 the charges against you and the consequences of your plea, I

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15 will make certain statements to you and I will ask you certain
 16 questions. I want you to understand that I need not accept
 17 your plea unless I am satisfied that you are, in fact, guilty,
 18 and that you fully understand your rights. I'm tempted to ask
 19 the government to pick a few favorite charges instead of all of
 20 these, but, okay.

21 Mr. Bennett, you've been charged in the 20-count
 22 indictment.

23 The first count charges you with a conspiracy to
 24 commit securities fraud, wire fraud, bank fraud, and money
 25 laundering, and to make false filings to the SEC. This crime

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1 carries a maximum sentence under the law of five years
 2 imprisonment, a maximum fine of the greatest of \$250,000 or
 3 twice the gross pecuniary gain derived from the offense or
 4 twice the gross pecuniary loss to persons other than yourself
 5 as a result of the offense, and a \$100 special assessment, and
 6 a maximum term of supervised release of three years.

7 Do you understand that those are the charges in Count
 8 One of the indictment and the maximum statutory penalties
 9 applicable to those charges?

10 THE DEFENDANT: I do, your Honor, yes.

11 THE COURT: Counts Two and Three of the indictment
 12 charge you with securities fraud. Each of these counts carries
 13 a maximum sentence of 20 years in prison, a maximum fine of
 14 \$5,000,000 or twice the gross pecuniary gain derived from the
 15 offense or twice the gross pecuniary loss to a person other
 16 than yourself as a result of the offense, a \$100 special
 17 assessment, and a maximum term of supervised release of three
 18 years.

19 Do you understand that those are the charges in Counts
 20 Two and Three and the maximum penalties under law for those
 21 charges of securities fraud?

22 THE DEFENDANT: I do, your Honor.

23 THE COURT: Count Four charges you with making a false
 24 filing with the Securities and Exchange Commission. And this
 25 crime carries a maximum statutory penalty of 20 years in

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82FVBENP Plea

1 prison, a maximum fine of the greatest of \$5,000,000 or twice
 2 the gross monetary gain derived from the offense or twice the
 3 gross monetary loss to a person other than yourself as a result
 4 of the offense, a \$100 special assessment, and a maximum term
 5 of supervised release of three years.

6 Do you understand that those are the charges in Count
 7 Four and the maximum penalties applicable to those charges?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: Counts Five and Six of the indictment
 10 charge you with making a false filing with the Securities and
 11 Exchange Commission -- excuse me, with the Securities and
 12 Exchange Commission. Each of these counts carries a maximum
 13 sentence under the law of five years imprisonment, a maximum
 14 fine of the greatest of \$250,000 or twice the gross pecuniary
 15 gain derived from the offense or twice the gross pecuniary loss
 16 to a person other than yourself as a result of the offense, and
 17 a \$100 special assessment, and a maximum supervised release
 18 term of three years. Do you understand that those are the
 19 charges in Counts Five and Six of the indictment and the

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20 maximum penalties provided for by law for those crimes?
21 THE DEFENDANT: Yes, I do, your Honor.
22 THE COURT: And Counts Seven through Thirteen of the
23 indictment charge you with wire fraud. Each of these counts
24 carries a maximum possible sentence of 20 years in prison, a
25 maximum fine of the greatest of \$250,000 or twice the gross
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1 pecuniary gain derived from the offense or twice the gross
2 pecuniary loss to a person other than yourself as a result of
3 the offense, a \$100 special assessment, and a maximum term of
4 supervised release of three years.
5 Do you understand that those are the charges in Counts
6 Seven through Thirteen, and the maximum penalties under the
7 statute for those charges?
8 THE DEFENDANT: Yes, I do, your Honor.
9 THE COURT: All right. Count Fourteen charges you
10 with making material misstatements to auditors. And this crime
11 carries a maximum sentence of 20 years imprisonment, a maximum
12 fine of \$5,000,000 or twice the gross pecuniary gain derived
13 from the offense or twice the gross pecuniary loss to a person
14 other than yourself as a result of the offense, a \$100 special
15 assessment, and a maximum term of supervised release of three
16 years.
17 Do you understand that that is the crime charged in
18 Count Fourteen of the indictment, and the maximum penalty
19 provided for by statute for Count Fourteen?
20 THE DEFENDANT: Yes, I do, your Honor.
21 THE COURT: Count Fifteen of the indictment charges
22 you with bank fraud. And this crime carries a maximum sentence
23 of 30 years in prison, a maximum fine of the greatest of
24 \$1,000,000 or twice the gross pecuniary gain derived from the
25 offense or twice the gross pecuniary loss to a person other
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1 than yourself as a result of the offense, a \$100 special
2 assessment, and a maximum term of supervised release of five
3 years.
4 Do you understand that that is the charge in Count
5 Fifteen, and that those are the maximum penalties provided for
6 by law?
7 THE DEFENDANT: Yes, your Honor. Forgive me, yes,
8 your Honor.
9 THE COURT: Counts Sixteen through Twenty charge you
10 with money laundering. Each of these counts carries a maximum
11 possible sentence of ten years imprisonment, a maximum fine of
12 the greatest of \$250,000, twice the gross pecuniary gain
13 derived from the offense or twice the gross pecuniary loss to a
14 person other than yourself as a result of the offense, and a
15 \$100 mandatory special assessment, and a maximum supervised
16 release term of five years.
17 Do you understand that those are the crimes charged in
18 Counts Sixteen through Twenty, and the maximum possible penalty
19 provided by law?
20 THE DEFENDANT: Yes, your Honor.
21 THE COURT: Do you also understand that the Court must
22 impose an order of restitution by law?
23 THE DEFENDANT: Yes, your Honor.
24 THE COURT: And do you understand that you are also

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25 subject to mandatory asset forfeiture?
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1 THE DEFENDANT: Yes, your Honor.
2 THE COURT: And do you understand that you have the
3 right to plead not guilty and the right to a trial on the
4 charges against you and, in fact, the right to a jury trial?

5 THE DEFENDANT: Yes, your Honor.
6 THE COURT: At this time, I'd ask the government to
7 recite the elements of the crimes charged.

8 MR. BAROFSKY: Yes, your Honor. For Count One,
9 conspiracy, the government would have to prove the following
10 elements:

11 First, that an agreement or understanding existed to
12 commit the objects charged in the indictment. Second, the
13 defendant knowingly became a member of that agreement or
14 understanding. And third, that one of the conspirators
15 knowingly committed at least one overt act in furtherance of
16 the conspiracy during the life of the conspiracy.

17 With respect to Counts Two and Three, securities
18 fraud, the government would have to prove, first, that Bennett,
19 in connection with the purchase or sale of securities, and for
20 Count Two, that would be the notes described in the indictment,
21 and in Count Three, the common stock of Refco described in the
22 indictment, he did one or more of the following: He either
23 employed a device, scheme, or artifice to defraud or made an
24 untrue statement of a material fact or omitted to state a
25 material fact which made what was said under the circumstances

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1 misleading or engage in an act, practice, or course of business
2 that operated or would operate as a fraud or deceit on a
3 purchaser or seller. Second, that Bennett acted knowingly,
4 willfully, and with intent to defraud. And, third, that he
5 used or caused to be used any means or instruments of
6 transportation or communication in interstate commerce, but he
7 used the mails in furtherance of the fraudulent conduct.

8 With respect to Count Four, which charges false filing
9 under the Exchange Act, the first element the government would
10 have to prove is that Refco was required by the Securities
11 Exchange Act of 1934 to file the 10-K that's described in Count
12 Four. And, second, the defendant knowingly and willfully made
13 or caused to be made a materially false or misleading statement
14 in that document or omitted to state any material fact required
15 to be stated therein or necessary to make the statements
16 therein not misleading.

17 With respect to Counts Five and Six, false filings
18 under the Securities Act, the government would have to prove,
19 again, first, that Refco was required under the Securities Act
20 of 1933 to file the S4, which is described in Count Five, and
21 the S1 registration statement described in Count Six. And,
22 second, that Bennett knowingly and willfully made or caused to
23 be made a materially false or misleading statement in those
24 documents or omitted to state any material fact required to be
25 state therein or necessary to make the statements therein not

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1 misleading.
 2 With respect to Counts Seven through Thirteen of wire
 3 fraud, the government would have to prove, first, that a scheme
 4 to defraud must have existed; that Bennett must have
 5 participated in the scheme with intent to defraud; that
 6 misrepresentations or omissions must have related to material
 7 facts were made in furtherance of the fraud; that the scheme
 8 was executed to obtain money or property; and that in the
 9 execution of the scheme, Bennett used or caused to be used the
 10 interstate wires listed in the indictment. And here for Count
 11 Seven is the June 22nd of 2004 email from Robert Trosten; in
 12 Count Eight, the August 3, '04 email from Robert Trosten; in
 13 Count Nine, the April 6, '05 transmission of the \$4 from New
 14 York to Virginia; in Count Ten, the July 19th, 2005
 15 transmission of 10-K from New York to Virginia; in Count
 16 Eleven, the August 5th, 2004 transmission of \$4,000,000 from
 17 New York to Illinois; in Count Twelve, the August 5th, 2004
 18 transmission of \$40,000,000 from New York to Illinois; and in
 19 Count Thirteen, the August 8th, 2005 transmission of the \$1
 20 registration statement from New York to Virginia.
 21 For Count Fourteen, material misstatements to
 22 auditors, the government would have to prove, first, that Refco
 23 was a public company that was required to submit financial
 24 statements to the SEC; second, that Bennett was a
 25 director/officer of Refco; third, Bennett knowingly and
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 1 willfully made, caused to be made, a materially false or
 2 misleading statement or omitted to state a material fact
 3 necessary order to make the statements made in light of the
 4 circumstances under which such statements were made not
 5 misleading to an accountant, and that the statement was made in
 6 connection with the audit or examination of the financial
 7 statements of Refco required to be made pursuant to the Act.
 8 Count Fifteen charges the defendant with bank fraud.
 9 And specifically, that on August 5th, 2004, defrauded HSBC.
 10 And the government would have to prove, first, there was a
 11 scheme to defraud a bank by means of materially false or
 12 fraudulent pretenses, representations, or promises; second,
 13 that Bennett executed or attempted to execute the scheme with
 14 intent to defraud the bank, here, again, HSBC; and third, at
 15 the time of the execution of the scheme, HSBC had its deposits
 16 insured by the FDIC. And I'll represent to the Court that at
 17 the relevant time periods, HSBC's deposits were insured by the
 18 FDIC.
 19 And finally, Counts Sixteen through Twenty charge the
 20 defendant with money laundering. And the government would have
 21 to prove, first, that Bennett engaged or attempted to engage in
 22 monetary transactions involving criminally derived property of
 23 a value greater than \$10,000; second, that the property
 24 involved in the monetary transaction was, in fact, derived and
 25 specified unlawful activity; third, that Bennett acted
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 1 knowingly. And for these purposes, wire fraud, bank fraud, and
 2 securities fraud are all specified unlawful activities and
 3 would have to prove each of the transactions listed in the
 4 indictment in Counts Sixteen through Twenty, basically the wire
 5 transactions which are described therein.

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6 THE COURT: Mr. Bennett, do you understand that if you
7 pled not guilty and went to trial, that the burden would be on
8 the government to prove each and every element of every crime
9 charged beyond a reasonable doubt in order to convict you of
10 that crime?

11 THE DEFENDANT: I do, your Honor.

12 THE COURT: Do you understand that at a trial you
13 would have the right to be represented by an attorney at all
14 stages of the proceeding and, if necessary, an attorney would
15 be appointed for you?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: And do you understand that at a trial you
18 would have the right to confront and cross-examine witnesses
19 and the right not to be compelled to incriminate yourself?

20 THE DEFENDANT: I do, your Honor.

21 THE COURT: And do you understand that at a trial you
22 would be presumed innocent until such time, if ever, the
23 government established your guilt by competent evidence to the
24 satisfaction of the trier of fact beyond a reasonable doubt?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: And do you understand that at a trial you
2 would have the right to testify and would also be entitled to
3 compulsory process; in other words, the right to call other
4 witnesses on your behalf?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And do you understand that if your plea is
7 accepted, that there will be no further trial of any kind, so
8 that by pleading guilty, you are waiving your right to a trial?

9 THE DEFENDANT: I do understand that, your Honor, yes.

10 THE COURT: And do you understand that if you are
11 sentenced to a period of supervised release, and if you violate
12 the terms of your supervised release, that an additional period
13 of jail time may be imposed without credit for the time that
14 you've previously spent on supervised release?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that in connection with
17 your plea of guilty, that the Court may ask you certain
18 questions about the offense to which you have pled; and if you
19 answer those questions under oath and on the record and in the
20 presence of your counsel, that your answers are false may later
21 be used against you in a prosecution against you for perjury or
22 false statement?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And I recall, Mr. Bennett, you're a
25 citizen of Great Britain.

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1 THE DEFENDANT: I am, your Honor, yes.

2 THE COURT: Do you understand that following any
3 sentence that you receive, that you will likely be deported?

4 THE DEFENDANT: That is my understanding, your Honor,
5 yes.

6 THE COURT: And do you understand that in determining
7 your sentence, that the Court is obligated to calculate the
8 applicable sentencing guidelines range, and to consider that
9 range and any possible departures under the guidelines and
10 other sentencing factors under the statute which entitles the

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11 Court to consider the nature and circumstances of the offense
 12 and the history and characteristics of the defendant?
 13 THE DEFENDANT: Yes, your Honor.
 14 THE COURT: And have you reviewed with your counsel
 15 the government's letter to them of yesterday which explains the
 16 government's position as to the sentence that you face if the
 17 sentencing guidelines are applied to your case?
 18 THE DEFENDANT: I have reviewed it, your Honor,
 19 correct.
 20 THE COURT: Actually, that was said very badly. Let
 21 me just try it again so that there's no confusion.
 22 Have you reviewed that letter with your lawyers which
 23 sets forth the government's calculation of the sentence that
 24 you face under the sentencing guidelines?
 25 THE DEFENDANT: I have reviewed it.
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1 THE COURT: And do you understand that the government
 2 calculates that under the guidelines, that you face a sentence
 3 of life imprisonment; and that it has calculated that the
 4 maximum possible statutory sentence is 315 years; and that the
 5 fine range is from 25,000 to \$5,000,000?
 6 THE DEFENDANT: I understand that, your Honor,
 7 correct.
 8 THE COURT: And do you understand that that
 9 calculation by the guidelines -- that by the government is just
 10 based on the information they currently have?
 11 THE DEFENDANT: Yes, your Honor.
 12 THE COURT: And do you further understand that the
 13 government's letter doesn't bind either the Court or the
 14 probation department, and that ultimately the sentence that you
 15 receive will be determined by the Court?
 16 THE DEFENDANT: Yes, your Honor.
 17 THE COURT: Mr. Bennett, have any threats or promises
 18 been made to you to make you plead guilty?
 19 THE DEFENDANT: No, your Honor.
 20 THE COURT: Have any understandings or promises been
 21 made to you concerning the sentence that you will receive?
 22 THE DEFENDANT: None.
 23 THE COURT: Is your plea voluntary?
 24 THE DEFENDANT: It is, your Honor.
 25 THE COURT: Mr. Bennett, did you commit the crimes
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1 that you've been charged with in the indictment?
 2 THE DEFENDANT: I did, your Honor.
 3 THE COURT: Would you tell me in your own words what
 4 you did?
 5 THE DEFENDANT: Your Honor, during the period that I
 6 served as CEO of Refco, I agreed with other Refco executives to
 7 enter into a series of transactions at the end of Refco's
 8 financial reporting periods to make it appear as if a
 9 receivable due to Refco from Refco Upholdings, Inc., a related
 10 party, was instead due from an independent third-party
 11 customer.
 12 The IGHI receivable was composed of, amongst other
 13 things, historical customer losses, bad debts, and expenses
 14 that IGHI had incurred on behalf of Refco.
 15 I, along with other Refco executives, have caused

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16 Refco to enter into these transactions in order to conceal the
 17 size and nature of the IGHI receivable. We concealed the
 18 receivable from, amongst others, Refco's auditors, Thomas H.
 19 Lee Partners, various lenders who, in 2004, participated in
 20 Refco's senior secured credit facility, and the issuance of 9
 21 percent senior subordinated notes, and also investors in
 22 Refco's common stock.

23 Among the lenders to whom I knowingly caused the IGHI
 24 receivable to be misrepresented was HSBC Bank, referenced in
 25 Count Fifteen of the indictment. I and other Refco executives
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1 also used the interstate wires to accomplish these acts within
 2 this district, as referenced in Counts Seven through Thirteen.
 3 Furthermore, I caused funds obtained from the transaction with
 4 Thomas H. Lee Partners, referenced in paragraph 34 of the
 5 indictment, to be wired to various parties receiving proceeds
 6 from the transaction, as referenced in Counts Sixteen through
 7 Twenty, knowing that this money had been unlawfully obtained.

8 The IGHI receivable and related party transaction used
 9 to conceal it were material information that Refco investors
 10 and lenders would have wanted to have known prior to investing
 11 in or lending money to Refco. While I believed that I would be
 12 able to pay the IGHI receivable down over time, and did, in
 13 fact, ultimately pay off the receivable balance in its
 14 entirety, I knew that failing to disclose the receivable was
 15 wrong; I knew that obtaining funds from Refco's investors and
 16 lenders based on misleading financial statements was also
 17 wrong.

18 I also caused Refco to file documents with the SEC,
 19 namely S1, S4, and 10-K that did not disclose the full extent
 20 of the IGHI receivable or the transactions used to conceal it;
 21 and, thus, were false and misleading with respect to material
 22 facts. I knew that failing to disclose these facts in public
 23 filings and in connection with Refco's sale and registration of
 24 Refco's notes and common stock was wrong, and I deeply regret
 25 having done so.

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1 Your Honor, I take full responsibility for my actions.
 2 I wish to publicly apologize to my family and to all of those
 3 who have been harmed by my conduct. Thank you, your Honor.

4 THE COURT: Mr. Barofsky, is there anything else you
 5 would want me to ask the defendant?

6 MR. BAROFSKY: Your Honor, can we just have a moment
 7 to review? There's a lot of elements. Thank you, your Honor.

8 THE COURT: Certainly.
 9 (Pause)

10 MR. BAROFSKY: Your Honor, just a couple of areas for
 11 clarification. First, if you can please ask the defendant to
 12 confirm that he was a director or officer of Refco during this
 13 relevant time period. Should I go one-by-one?

14 THE COURT: Mr. Bennett, can you confirm that?

15 THE DEFENDANT: I was, your Honor.

16 MR. BAROFSKY: Second, your Honor, that the
 17 misstatements made about Refco's auditor was in connection with
 18 the auditor's preparation of a financial statement, and that
 19 occurred after April of 2005.

20 THE COURT: Can you confirm that?

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21 THE DEFENDANT: That's correct, your Honor.
22 MR. BAROFSKY: Your Honor, and if you can ask the
23 defendant to confirm he made reference to various wire
24 transfers and wire communications, as well as certain filings
25 in the indictment, if you could please confirm with the
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1 defendant that those acts occurred on or about the dates set
2 forth in the indictment.
3 THE DEFENDANT: They did, your Honor.
4 MR. BAROFSKY: And finally, your Honor, as I noted
5 earlier, I will represent to the Court that HSBC was --
6 deposits were insured by the FDIC during the relevant time
7 period; and also that Refco was an entity that was required to
8 file the various reports and documents and registration
9 statements under the Exchange Acts of 1933 and 1934, as well as
10 to file financial statements with respect to the 10-K and the
11 misstatement to auditors account. Thank you, your Honor.
12 THE COURT: Mr. Bennett, do you still wish to plead
13 guilty?
14 THE DEFENDANT: I do, your Honor, yes.
15 THE COURT: Mr. Naftalis, do you know of any reason
16 that Mr. Bennett ought not plead guilty?
17 MR. NAFTALIS: No, your Honor.
18 THE COURT: Mr. Bennett, I'm satisfied that you
19 understand the nature of the charge against you and the
20 consequences of your plea; and that your plea is made
21 voluntarily and knowingly; and that there is a factual basis
22 for it. Accordingly, I will accept your plea of guilty and
23 direct that a presentence report be prepared.
24 THE DEFENDANT: Thank you, your Honor.
25 THE COURT: As for a sentencing date, can I just
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1 basically count out the requisite number of days or does the
2 government have a view that it should be maybe a little bit
3 more off into the future in light of the trial that's still
4 upcoming?
5 MR. BAROFSKY: Your Honor, we think we can be prepared
6 in three months.
7 THE COURT: All right. Why don't we set sentencing
8 for May 20th at 4 o'clock. And since I would anticipate some
9 significant presentence submissions, I think we should set a
10 schedule for that. Why don't we say that the government's
11 submission is due -- the defense submission is due on May 6th,
12 and the government's on May 13th.
13 MR. BAROFSKY: That's fine, your Honor.
14 MR. NAFTALIS: Your Honor, if there are things in the
15 government submission that we want to respond to, that's sort
16 of --
17 THE COURT: Doesn't give you quite enough time.
18 MR. NAFTALIS: We don't have -- you're having us
19 first, so we don't really sort of provide -- they could go
20 first, we could go second; we wouldn't object to that.
21 MR. BAROFSKY: We could do simultaneous submissions,
22 as well, your Honor, on the 6th and then we could each respond.
23 THE COURT: Sounds like fun.
24 MR. BAROFSKY: Okay.
25 MR. NAFTALIS: It's a living.

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1 THE COURT: Let's not go there. Okay? Are we done?
2 MR. BAROFSKY: No, your Honor. There is the issue of
3 bail. And at this time, your Honor, the government does
4 request that defendant be remanded. And if your Honor will let
5 me, I would like to speak briefly on the topic.

6 THE COURT: Okay.

7 MR. BAROFSKY: Obviously the standard has changed
8 under the Bail Act under 3143. Before when we appeared before
9 your Honor several years ago, the burden was ours to prove the
10 defendant was a risk of flight. Now, of course, it is the
11 defendant's burden to prove by clear and convincing evidence
12 that he is not likely to flee. And respectfully, we submit
13 that there have been some extremely significant changed
14 circumstances, that we respectfully submit the defendant cannot
15 meet the burden in this case.

16 First of all, under the current bond, which, as your
17 Honor may recall, is a \$50,000,000 bond, secured by \$5,000,000
18 in cash and two properties, that security is now essentially
19 worthless; it's essentially an unsecured bond, because all of
20 those properties and that money are subject to asset
21 forfeiture. The \$5,000,000 we have traced as direct proceeds
22 from the IPO, which the defendant has just admitted was money
23 that was fraudulently obtained, and we already have lis pendens
24 on both of the properties, because basically under substitute
25 assets, we'd be able to take those, as well. Those are all

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1 subject to asset forfeiture and, therefore, don't provide any
2 security for the existing bond.

3 Secondly, the defendant is facing a \$2.4 billion asset
4 forfeiture. We don't think he has \$2.4 billion, but we do
5 believe that will essentially -- through proceeds and
6 substitute assets, once this conviction is final -- will
7 basically deprive the defendant of all of his assets. We have
8 restrained a number of his assets pretrial, but we have not
9 been able to restrain assets that we haven't been able to prove
10 are directly traceable. And we don't know the exact amount of
11 those items, but we believe that they are in the \$20,000,000
12 range, which would certainly facilitate the ability of the
13 defendant to flee.

14 Third, and I guess the most obvious point, is the
15 defendant now faces an advisory guideline range of 315 years of
16 imprisonment. And that obviously changes the calculus a lot
17 from when we last appeared before your Honor. We're not
18 suggesting that your Honor is going to --

19 THE COURT: He always faced that, right?

20 MR. BAROFSKY: Yes, your Honor; but before,
21 pretrial -- I'm sorry, pre-guilty plea, there was no certainty
22 that he was necessarily going to be convicted in this case.
23 Now, jail is an inevitability. And I don't mean to presume
24 what the ultimate sentence will be in this case, because
25 there's obviously no way to predict what the precise sentence

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1 will be, but the best guess, I think, from anyone's

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perspective, is that it will be a substantial prison sentence. And for this defendant -- he is now with certainty facing such a sentence that has -- under the guidelines is the equivalent of a life sentence.

Defendant is 59 years old. A sentence of -- a significant sentence in this case may very well prove to be the equivalent of a life sentence. The defendant is facing certain deportation after he serves that sentence.

THE COURT: Not to a bad place though.

MR. BAROFSKY: Not to a bad place, your Honor. But it does give the defendant a tremendous incentive to self-deport. In other words, to flee the jurisdiction really with -- unlike most cases, with very little downside. The worse that happens if he flees and gets caught is he's brought back to the United States and does a jail sentence that probably will be the rest of his life. If he stays, he's facing pretty much the prospect of the same result, a sentence that may, in fact, result in him being in jail for the rest of his life, given his age.

And, your Honor, we respectfully submit that given the shifting of the burden in these really remarkable circumstances of a defendant who's not a U.S. citizen, who's facing the equivalent of a life sentence, and who's now basically would be free on an unsecured bond, that the circumstances dictate the defendant should start serving his sentence, in effect,

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immediately. And the defendant should be remanded on the grounds that he cannot meet his burden of demonstrating by clear and convincing evidence that he is not a risk of flight.

THE COURT: Mr. Naftalis.

MR. NAFTALIS: Most respectfully, I find this application most surprising and a baseless one. And I say it with -- most advisedly.

You have a situation here where our client, for almost two and-a-half years, has met every single condition of the bond that was set here. Your Honor got a report today from the office of pretrial services, which we were given a copy of when we entered the room, in which the office of pretrial services has pointed out that he has complied with the terms of his bail all the way through.

And I can sort of punctuate that a little bit because, in fact, if you check with Officer Forelli, who he deals with in pretrial services, you could hear anecdotal information such as Mr. Bennett was the one who has set up the monitoring system in the house in New Jersey because, whatever, I guess they're technophobes, like I, the marshals service, he actually set up the monitoring service which passed their muster in the electronic stuff. Once, when his bracelet broke down, he immediately reported it to Officer Forelli that it was malfunctioning and he went in. He's been meticulous in reporting to these people.

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And secondly, something that the government consciously avoided bringing to your attention, his bond is signed by the three immediate members of his family. The three of them who are American citizens: His wife, his daughter, and his son. They have signed a \$50,000,000 bond on his behalf, and these are people with roots in the community. The daughter

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7 is a lawyer, works at a law firm; the son is an investment
 8 banker with a leading firm. The notion that he would run away
 9 and do that to his family, I mean, is incomprehensible. And
 10 all we have is rhetoric from the government there.

11 You also have the strict monitoring conditions in
 12 which he's under and which he's faithfully complied with for
 13 the last two and-a-half years. Of course, he has no passport;
 14 his wife has given up his passport; he has no effective way of
 15 leaving the country.

16 And with respect to other situations, in other
 17 situations in high-profile cases where people were facing
 18 enormous sentences, no such applications were ever granted.
 19 For example, the Computer Associates case, where the CEO of
 20 Computer Associates, Mr. Kumar, who, under the guidelines which
 21 were then in effect, more applicable now, after the Gall case,
 22 the guidelines are just, you know, one ingredient in the soup
 23 for your Honor to consider under 3533. He faced life
 24 imprisonment under his guidelines. After pleading guilty, he
 25 continued to be free on bond, even though there were admissions

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1 of obstruction of justice in that case.

2 After Kumar was sentenced or he got a 12-year
 3 sentence, he continued to be allowed to be -- remained free on
 4 bond to work out various issues of restitution and the like.

5 In the case in front of Judge Sand, the Adelphia case,
 6 which is one of the cases, the Rigases, who got 15 and 20-year
 7 sentences, one of them was an eighty -- somewhere in his
 8 eighties, they were allowed to remain free on bond pending
 9 appeal, even though they had the same sort of issues. Even
 10 Mr. Ebberts, who received the largest sentence in history I've
 11 ever heard of, a real outlier sentence, 25 years, he was
 12 allowed to remain free on bond pending appeal and the like.

13 And apart from the fact that there is not the
 14 slightest bit of evidence for this most unfair application,
 15 it's also prejudicial. As your Honor knows, we have to put in
 16 sentencing submissions. And under 3533, your Honor has a lot
 17 of things which you can properly consider in determining in
 18 your best judgment what's a fair and just sentence under the
 19 case here. And obviously it's very prejudicial to us in being
 20 able to work with our client, who for the last two and-a-half
 21 years has been coming to our office every day on a daily basis
 22 to work on the case with us. So I don't see any good-faith
 23 basis for any change in bond here whatsoever.

24 THE COURT: Mr. Barofsky.

25 MR. BAROFSKY: Your Honor, if there's any specific

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1 points you'd like me to respond to. The ones that jump out to
 2 me is, I mean the notion that a defendant can't chronically
 3 prepare for sentencing when he's incarcerated, obviously your
 4 Honor knows countless defendants who are able to prepare for
 5 sentencing when they are incarcerated; and having spent so much
 6 time with Mr. Naftalis, I think they are pretty much -- I'm
 7 sure they have contemplated this before, this is not the first
 8 time.

9 As opposed to those other cases, defendants who are
 10 released pending appeal after they've been convicted at trial
 11 is a different situation. There's obviously provisions within

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12 3143 when there are issues on appeal that the judge finds are
 13 significant issues that need to be considered and possibly
 14 could result in the reversal of a conviction. That's a
 15 different -- those are different facts, and that's a different
 16 standard. Here, we have a guilty plea. I don't think that
 17 Mr. Bennett is going to be challenging his conviction in this
 18 case. He just gave a very detailed guilty plea.

19 With respect to his assurances to his family, I don't
 20 mean to minimize the bond between Mr. Bennett and his family,
 21 but on the flip side, we're looking at a man who just admitted
 22 to telling a series of lies to a large number of victims that
 23 resulted in the defrauding of \$2.4 billion. 1.7 or 8 billion,
 24 which we will show for restitution at the time of sentencing,
 25 has not been collected. People are out all of this money.

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1 So this man maybe may have some allegiance to his
 2 family, but I think you have to look at the flip side as to how
 3 strong that may be by a man if he is willing to tell whatever
 4 lie is necessary to -- you know, on proportions that are
 5 mind-boggling, in the billions of dollars.

6 So we would respectfully submit that -- and we don't
 7 contest the fact, by the way, to be clear, that Mr. Bennett has
 8 complied with the conditions. And that is certainly a relevant
 9 factor that Mr. Naftalis points out and we don't contest it.
 10 We just don't think that that's enough to meet his burden,
 11 given his changed circumstances. And that to allow a defendant
 12 like this, who's also not a U.S. citizen, unlike those
 13 individuals, out on what is essentially an unsecured bond, it
 14 simply isn't the right course of action here.

15 MR. NAFTALIS: Just one small point, which they
 16 reminded me to mention. Although Mr. Bennett never changed his
 17 citizenship, like his wife, or became an American citizen like
 18 his children, he's lived in the United States for more than 30
 19 years; so it's not like he has any roots anyplace else. So
 20 it's a little unfair for this eleventh-hour application which
 21 we heard about today to suggest as if he had someplace to go
 22 to.

23 And the government ignored the situation in the Kumar
 24 case. He said that all these other cases where people were on
 25 appeal. In the Kumar case it was a plea of guilty with someone

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1 facing, if one took the government's view of the thing, a life
 2 sentence. And he was allowed out, and he showed up. Even
 3 after he got his sentence of 12 years he remained out on bond
 4 to work out the restitution things.

5 And we don't necessarily agree at all with the amount
 6 of the forfeiture issues here. I mean there's a forfeiture
 7 issue in the case, but the numbers he tosses around are not
 8 numbers that we have stipulated to or agreed to by any stretch
 9 of the imagination, and he throws them around.

10 That's the only point I wanted to make.

11 THE COURT: All right. I'm not going to remand
 12 Mr. Bennett, although I do think I can modify his bail
 13 conditions to create greater security. And I'm not going to do
 14 so for a number of reasons, the most important of which is that
 15 this indictment was filed in 2005.

16 If Mr. Bennett had wanted to flee, he should have fled

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17 before he paid his lawyers all the money, and kept it, and gone
 18 to an appealing location. In fact, having pled guilty, to
 19 leave now, extraditing him will be much easier. So there's a
 20 balance there.

21 In addition, I note that just by statute, to release
 22 someone on appeal requires the same finding as the finding now.
 23 The judicial officer has to be persuaded by clear and
 24 convincing evidence that the person is not likely to flee.
 25 That's half of the standard. The appellate issue is the other

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1 half, so it's the same standard.

2 And I also think that -- and I want to make it
 3 clear -- that I don't make any prejudgments about the substance
 4 of the case, but this is a case in which there has been a lot
 5 of information, publicly, at least, from the bankruptcy
 6 proceeding, and so this is a situation in which Mr. Bennett has
 7 had the opportunity to see an examiner put the evidence
 8 together. This is not a situation where as the case approaches
 9 trial, the government finally turns over information. I think
 10 Mr. Bennett has had a pretty good idea of the nature of the
 11 case and the evidence for at least some time, which makes the
 12 fact that he stays more significant.

13 The pretrial officer tells me that it would be easier
 14 and more effective to monitor Mr. Bennett if he stayed in one
 15 home or the other. And, I guess -- and tells me that basically
 16 the minute he leaves home they know about it. So given that it
 17 would take some time to -- since make an escape without a
 18 passport, I think that if we modified the bail conditions to
 19 limit his location, pretrial tells me that that makes it a more
 20 secure situation. In addition, if the government has any
 21 particular practical economic conditions that you can think of,
 22 I'm always willing to listen to those.

23 MR. BAROFSKY: Your Honor, the posting of additional
 24 assets by the defendant, they are largely forfeitable assets,
 25 but to the extent that there are assets that have not been --

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1 as I said, we estimate that it's in the range of approximately
 2 \$20,000,000. If we could at least secure those assets, these
 3 are assets that we've not yet secured by having him posted for
 4 the bond.

5 In addition, because, frankly, we're going to get
 6 those assets anyhow at the conclusion of this case, perhaps the
 7 posting the requiring of assets from the children. He
 8 mentioned that the children are successful, one's an investment
 9 banker. And if they have property, that may increase the
 10 incentive for Mr. Bennett to stay.

11 THE COURT: I think it's enough that he's -- the bond,
 12 mortgages their future if he flees. We're not taking his kids'
 13 money.

14 MR. BAROFSKY: We aren't. I wouldn't suggest that we
 15 would take it other than if he fled. We would only be posting
 16 whatever interest. Because really right now the problem, your
 17 Honor, and I hear what your Honor is saying, is that he has an
 18 unsecured bond, and that just causes us a great deal of
 19 concern. I don't know what the circumstances are in Kumar or
 20 Ebberts, but this is a situation if there is a third party
 21 posting collateral --

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22 THE COURT: For all those people, the bottom line is
 23 that for any defendant who was older and who was facing
 24 sentencing, in, lets call it, the post-Enron era, the situation
 25 was the same as for Mr. Bennett. The possibility that their
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1 sentence would be -- that their residence in the Bureau of
 2 Prisons was the last residence they are going to have.
 3 So I don't think this is really dramatically
 4 different. And I don't think the fact that he's a British
 5 citizen changes the situation, that he has to -- I think he
 6 gets the credit for having complied with all of his bail
 7 conditions and having had two and-a-half years to reflect.
 8 MR. BAROFSKY: Your Honor, to be clear, I wasn't
 9 rearguing the bail application. I was merely trying to respond
 10 to your Honor's question whether there were additional economic
 11 circumstances.

12 THE COURT: I'm not asking his children, okay?
 13 MR. BAROFSKY: Well, your Honor, then I would ask that
 14 in the alternative, if the defendant could post additional
 15 property or money that has not been seized or frozen by the
 16 government to secure this bond to at least increase so that
 17 there's some notional security of the bond. And I would ask
 18 for a number of \$10,000,000 in cash or property.

19 MR. NAFTALIS: Your Honor, I just think there is no
 20 basis whatsoever for the application. His children, the most
 21 important things in the world, are on the hook for \$50,000,000
 22 if he were to leave. As they've indicated, they don't have any
 23 evidence of anything that he's ever done anything which would
 24 indicate he would leave. As your Honor said, quite correctly,
 25 we've known about the evidence in this case; your Honor

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1 remembers the litigation with respect to the bankruptcy trusts,
 2 these report the motion practice there. There's no secret
 3 about that. He's showed up all the time; he's complied with
 4 all the conditions. And there's not a reason in the world and
 5 there's not a basis in the world for any change here
 6 whatsoever.

7 MR. BAROFSKY: Your Honor, respectfully, I don't see
 8 any harm in having him post additional property that could only
 9 be used at this time for the purposes to facilitate flight. He
 10 can't transfer these properties without violating the money
 11 laundering laws at this point, and I don't see -- I don't even
 12 understand how upping the collateral so as to prevent him from
 13 fleeing prejudices him in any way. And we're not asking even
 14 for all of the money that we believe is out there, we're asking
 15 for \$10,000,000 to provide some additional security on what is
 16 now an essentially an uncollateralized bond. It doesn't really
 17 move the ball tremendously for us, but it helps. And at least
 18 it would limit his ability to flee, should he make that
 19 decision, that it makes more sense to self-deport, since he's
 20 going to be going back to England anyhow before he has to face
 21 the sentence. I don't think the government's request is
 22 shocking or surprising or terribly dramatic, but we do think it
 23 would help, given the situation.

24 MR. NAFTALIS: They have not shown anything for this
 25 eleventh-hour request. It's totally and absolutely baseless.

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1 And I don't think -- I don't know what property may or may not
2 exist, but I don't think that there's any justification. And
3 they just can't come into court without any basis whatsoever
4 and allege things where all the evidence shows that this
5 application is frivolous.
6 MR. BAROFSKY: Your Honor, I've listened to this for a
7 fair amount of time now. And to characterize our application
8 as frivolous and baseless and eleventh-hour I think is unfair.
9 THE COURT: At least the eleventh hour.
10 MR. BAROFSKY: I don't know when we were supposed to
11 have made this application. I don't know if Mr. Naftalis would
12 have had us make it when he notified us about the intent to
13 change his plea yesterday afternoon, I don't think so. I think
14 the only time we can make a plea based on the changed
15 circumstance of the defendant entering a guilty plea is after
16 he enters the guilty plea.
17 As far as it being baseless, the notion that a
18 defendant who's facing 315 years of prison time --
19 THE COURT: He wishes.
20 MR. BAROFSKY: -- is -- that it's baseless to seek his
21 remand when he is an English citizen subject to deportation --
22 THE COURT: Excuse me. We're not -- we're sending him
23 to one of the most civilized countries in the world. It's not
24 punishment to live in England, all right?
25 MR. BAROFSKY: Exactly, your Honor, which is why we
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1 would ask for additional collateral.
2 THE COURT: And there is an extradition treaty between
3 the United States and Great Britain, so...
4 MR. BAROFSKY: Your Honor, I just don't understand the
5 harm --
6 THE COURT: Because I'm not sure that the purpose of
7 bail is to help you collect, you know, whatever you claim is
8 your eventual restitution.
9 MR. BAROFSKY: Your Honor, if I wasn't clear on this
10 argument, I apologize. The reason why we're asking for this is
11 to assure the defendant's appearance. If that money is posted
12 as a bond, it's not so that we can eventually seize it. If
13 it's posted as a bond, it's not available for him to use to
14 facilitate flight. It's also to secure the bond. This
15 original bond was issued because it was secured by money and
16 property. Right now it's essentially not secured by money and
17 property.
18 THE COURT: But that argument applies to any
19 additional money that he would put up. You would say it was
20 just as forfeitable to you. So it then becomes unsecured, the
21 same way.
22 MR. BAROFSKY: But it's unrestrained property, Judge,
23 that's the difference. This property is actually restrained on
24 top of the fact that it's -- because it's their direct
25 proceeds.

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1 what I'm suggesting, these are other properties that
2 have not been restrained, because we're not able to restrain
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3 certain properties that are not proceeds. So this is money
4 that is available to the defendant for use if he wants to
5 facilitate flight.

6 The purpose of a bond, obviously security of a bond,
7 and why your Honor endorsed the order of a secured bond, was
8 because more security means less likelihood of flight. And all
9 we're suggesting is taking this property that is now available
10 to the defendant and posting it as security for the bond. And
11 obviously if we are unable to prove, as Mr. Naftalis suggests,
12 that this is property that's subject to asset forfeiture or
13 restitution, he'll get it back when -- at the time of his
14 sentencing or the time that he reports.

15 So we're not taking anything; we're not putting our
16 hands on stuff that we're not entitled to; we're just asking
17 that this bond be really secured, because right now we're
18 basically -- it's the exact same situation we had in October of
19 2005, when he's going out on the same conditions, it's
20 essentially an unsecured bond. And I don't think that your
21 Honor would have ordered an unsecured bond back then, and we're
22 just asking for some additional security: Money that is
23 available for the defendant or property, and that we have that
24 to secure the bond in case the defendant flees, and to
25 encourage him not to flee.

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1 MR. NAFTALIS: Apart from the fact that the government
2 has proffered not a single fact that anything has changed, I
3 don't agree with the notion that this bond is unsecured. One
4 of the homes which is securing the bond -- there's \$5,000,000
5 cash, there's two residences, is in a trust. So without going
6 through all the legalities, I don't think it's so quickly
7 forfeitable, as they say.

8 And the notion of ignoring -- and that will be worked
9 out; we're not here to litigate that issue, but I just -- and
10 the notion that they can continue to ignore the fact that his
11 wife and children have signed a \$50,000,000 bond that they will
12 be on the hook for and their lives will be ruined, the notion
13 there's not the slightest reason to suppose that he would do
14 this to his children, he never has, and I have nothing else to
15 say.

16 THE COURT: I think \$50,000,000 is a lot of money.
17 And it does directly affect wife, children, inheritances. So
18 what about the issue of where he's going to live?

19 MR. NAFTALIS: If your Honor wants -- feels it would
20 be better, pretrial services --

21 THE COURT: That's what pretrial tells me.

22 MR. NAFTALIS: I think he would -- there's a residence
23 in New York and a residence in New Jersey. I think he would
24 prefer to be in New Jersey where his wife is, and then subject
25 to the fact he could just come to our offices and work with us,

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1 which I think he's allowed to do, I think that would be his
2 preference in terms of the quality of the life until the
3 sentence, if that's --

4 THE COURT: I get the high sign from pretrial; so
5 he'll stay in New Jersey.

6 MR. NAFTALIS: Okay.

7 THE COURT: Other than when he goes to you and also

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8 when you have to get him to pretrial for -- to probation for
9 his interview.

10 MR. NAFTALIS: Yes.

11 THE COURT: Which we do need to do within the two
12 weeks so that the sentencing schedule can proceed. And the
13 same is true for the government's description of the crimes.

14 Okay? I think we're done then.

15 MR. NAFTALIS: Thank you, your Honor.

16 MR. BAROFSKY: Thank you, your Honor.

17 MR. GARCIA: Thank you, your Honor.

18 THE DEFENDANT: Thank you, your Honor.

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EXHIBIT H

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

05 CR 1192 (NRB)

ROBERT TROSTEN,

Defendant.

-----X

New York, N.Y.
February 20, 2008
5:30 p.m.

Before:

HON. NAOMI REICE BUCHWALD

District Judge

APPEARANCES

MICHAEL J. GARCIA

Acting United States Attorney for the
Southern District of New York

BY: CHRISTOPHER GARCIA

NEIL BAROFSKY

Assistant United States Attorneys

MORVILLO, ABRAMOWITZ, GRAND, IASON,
ANELLO & BOHRER, P.C.

Attorneys for Defendant

BY: ROBERT G. MORVILLO

CHRISTOPHER J. MORVILLO

RACHEL M. KORENBLAT

Also Present: Robert W. Manchak, Criminal Investigator
Rua M. Kelly, Assistant United States Attorney
Mary Beth Allen, Paralegal
United States Attorney's Office

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(In open court)

THE CLERK: The case is United States v. Robert
Trosten, Docket No. 05 Crim. 1192. Is the government ready to
proceed?

MR. GARCIA: Yes. Good afternoon, your Honor.
Christopher Garcia on behalf of the government. With me at
counsel table is Assistant United States Attorney Neil
Barofsky. And with the Court's permission, also at counsel
table: Robert Manchak, criminal investigator with our office;

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10 Mary Beth Allen, paralegal with our office; and also Rua Kelly,
11 also an Assistant United States Attorney with our office.

12 THE CLERK: And is the defense attorney ready to
13 proceed?

14 MR. R. MORVILLO: We are, your Honor. Mr. Trosten is
15 here. For the record, my name is Robert Morvillo. I represent
16 Mr. Trosten. And seated to my left is Christopher Morvillo, my
17 co-counsel.

18 THE DEFENDANT: Good afternoon.

19 THE COURT: Good afternoon, Mr. Morvillo.

20 MR. R. MORVILLO: I think it's my application, your
21 Honor. We would apply to the Court for permission to withdraw
22 our previously entered plea of not guilty as to Counts One,
23 Two, Seven, Fifteen, and Seventeen of the indictment and enter
24 a plea of guilty.

25 THE COURT: Mr. Trosten, if you will remain standing
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1 for a moment, would you raise your right hand, please.

2 Do you solemnly swear that the answers to the
3 questions I am about to ask you will be the truth, the whole
4 truth, and nothing but the truth, so help you God?

5 THE DEFENDANT: I do, your Honor.

6 THE COURT: Would you state your full name for me,
7 please.

8 THE DEFENDANT: Robert Charles Trosten, Sr.

9 THE COURT: And, Mr. Trosten, how old are you?

10 THE DEFENDANT: 38.

11 THE COURT: Why don't you sit down.

12 THE DEFENDANT: Thank you.

13 THE COURT: Mr. Trosten, what was the last grade or
14 level of school that you completed?

15 THE DEFENDANT: I finished undergraduate college with
16 a B.S. in accounting.

17 THE COURT: At this time are you under the care of a
18 doctor or psychiatrist?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: Which?

21 THE DEFENDANT: A doctor -- a psychiatrist.

22 THE COURT: And what condition is he treating you for?

23 THE DEFENDANT: Dr. Neiman is treating me for sleep
24 and anxiety on occasion.

25 THE COURT: And are you taking any medicine as a
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1 result of or in connection with that treatment?

2 THE DEFENDANT: I take sleep medicine as needed and
3 anxiety medicine as needed.

4 THE COURT: At the moment, are you under the influence
5 of any drug or alcohol?

6 THE DEFENDANT: No, I'm not.

7 THE COURT: Have you in fact ever been hospitalized or
8 treated for either alcoholism or narcotics addiction?

9 THE DEFENDANT: No, I have not.

10 THE COURT: And how are you feeling physically today?

11 THE DEFENDANT: I feel great.

12 THE COURT: Have you had sufficient time to discuss
13 the charges against you and your proposed plea with your
14 counsel, the Messrs. Morvillo?

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15 THE DEFENDANT: I have, yes.
16 THE COURT: And have you been satisfied with the
17 advice and counsel that they have given to you?
18 THE DEFENDANT: I am.
19 THE COURT: And at this time, are you ready to change
20 your plea?
21 THE DEFENDANT: I am indeed.
22 THE COURT: And what is your plea at the moment?
23 Guilty or not guilty?
24 THE DEFENDANT: Guilty.
25 THE COURT: All right. Mr. Trosten, in order to
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1 determine whether your plea is voluntary and made with a full
2 understanding of the charges against you and the consequences
3 of your plea, I will make certain statements to you and I will
4 ask you certain questions. I want you to understand that I
5 need not accept your plea unless I am satisfied that you are in
6 fact guilty and that you fully understand your rights.
7 Now, Count One of the indictment charges you with a
8 conspiracy to commit securities fraud, wire fraud, bank fraud,
9 and money laundering, and to make false filings with the SEC
10 and material misstatements to auditors. This crime carries a
11 maximum statutory penalty of five years in prison, a maximum
12 fine of the greatest of \$250,000 or twice the gross pecuniary
13 gain derived from the offense or twice the gross pecuniary loss
14 to a person other than yourself as a result of the offense, a
15 \$100 special assessment, and a mandatory term of supervised
16 release of three years. Do you understand that those are the
17 charges in Count One and the maximum statutory penalties
18 provided for that charge?
19 THE DEFENDANT: I do.
20 THE COURT: Count Two charges you with securities
21 fraud. And this crime carries a maximum possible sentence of
22 20 years in prison, a maximum fine of the greatest of \$5
23 million or twice the gross pecuniary loss derived from the
24 offense, or twice the gross pecuniary loss -- I'm sorry. I
25 think I said twice pecuniary loss. It's twice the gross
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1 pecuniary gain derived from the offense or twice the gross
2 pecuniary loss to a person other than yourself as a result of
3 the offense, a \$100 special assessment, and a maximum term of
4 supervised release of three years. Do you understand that
5 those are the charges in Count Two and the maximum possible
6 penalties provided by law?
7 THE DEFENDANT: I do.
8 THE COURT: Count Seven charges you with wire fraud,
9 and this crime carries a maximum possible sentence of 20 years
10 in prison, a maximum fine of the greatest of \$250,000 or twice
11 the gross pecuniary gain derived from the offense or twice the
12 gross pecuniary loss to a person other than yourself as a
13 result of the offense, a \$100 special assessment, and a maximum
14 term of supervised release of three years. Do you understand
15 that those are the charges in Count Seven and the maximum
16 statutory penalty provided for the crime of wire fraud?
17 THE DEFENDANT: I do, your Honor.
18 THE COURT: Count Fifteen charges you with bank fraud.
19 And this crime carries a maximum possible sentence of 30 years

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20 in prison, a maximum fine of the greatest of \$250,000 or twice
21 the gross pecuniary gain derived from the offense or twice the
22 gross pecuniary loss to a person other than yourself as a
23 result of the offense, a \$100 special assessment, and a
24 mandatory -- or a maximum term of supervised release of five
25 years. Do you understand that those are the charges in Count

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1 Fifteen and the maximum statutory penalty provided therefor?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: Count Seventeen charges you with money
4 laundering, and this crime carries a maximum sentence of ten
5 years in prison, a maximum fine of the greatest of \$250,000 or
6 twice the gross pecuniary gain derived from the offense or
7 twice the gross pecuniary loss to a person other than yourself
8 as a result of the offense, a \$100 mandatory special
9 assessment, and a maximum supervised release term of three
10 years. Do you understand that that is the charge in Count
11 Seventeen and the maximum penalty provided for it by statute?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: And do you understand that, in addition to
14 the punishments which I just described, that the Court must
15 order restitution with respect to the charges in the
16 indictment?

17 THE DEFENDANT: I'm sorry, your Honor?

18 THE COURT: I said, do you understand that in addition
19 to the punishments that I've just described, that the Court
20 must order restitution --

21 THE DEFENDANT: I do.

22 THE COURT: -- with respect to the charges to which
23 you are pleading?

24 THE DEFENDANT: I do.

25 THE COURT: Do you understand that as part of your
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1 plea agreement, that you have admitted the forfeiture
2 allegations in the indictment and that you agree to forfeit to
3 the United States the sum of \$2,400,000,000, as well as all the
4 specific property listed in schedule A to your plea agreement?

5 THE DEFENDANT: I do, your Honor.

6 THE COURT: And that as part of this plea agreement,
7 that you have agreed to not file any claims for any of the
8 forfeited property, and also to take such steps as necessary to
9 clear title to the specific property?

10 THE DEFENDANT: I do, your Honor.

11 THE COURT: And do you understand that you have the
12 right to plead not guilty and the right to a trial on the
13 charges against you and in fact the right to a jury trial?

14 THE DEFENDANT: I do.

15 THE COURT: At this time, Mr. Garcia, I would ask you,
16 please, to recite the elements of the crimes to which
17 Mr. Trosten is pleading.

18 MR. GARCIA: Yes, your Honor. With respect to Count
19 One, there are three elements: first, that there existed an
20 agreement or understanding to commit the objects charged;
21 second, that Mr. Trosten knowingly became a member of that
22 agreement or understanding; and, third, that one of the
23 co-conspirators knowingly committed at least one overt act in
24 furtherance of the conspiracy during the life of the

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25 conspiracy.

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1 With respect to Count Two, the securities fraud count,
 2 the first element is that Mr. Trosten, in connection with the
 3 purchase or sale of securities, here the notes described in
 4 Count Two, did one or more of the following: employed a device,
 5 scheme, or artifice to defraud; or made an untrue statement of
 6 material fact; or omitted to state a material fact which made
 7 what was said, under the circumstances, misleading; or engaged
 8 in an act, practice, or course of business that operated or
 9 would operate as a fraud or deceit upon a purchaser or seller.
 10 Second, that Mr. Trosten acted knowingly, willfully, and with
 11 intent to defraud. And, third, that Mr. Trosten used or caused
 12 to be used any means or instruments of transportation or
 13 communication in interstate commerce, or the use of the mails,
 14 in furtherance of the fraudulent conduct.

15 With respect to Count Seven, the wire fraud count,
 16 there are five elements: first, that a scheme to defraud
 17 existed; second, that Mr. Trosten must have participated in the
 18 scheme with intent to defraud; third, that misrepresentations
 19 or omissions must have related to material facts; fourth, that
 20 the scheme was executed to obtain money or property; and
 21 finally, that in executing the scheme, Mr. Trosten used or
 22 caused to be used interstate wires, or the use of such wires
 23 were reasonably foreseeable to him, as listed in the
 24 indictment. And here, your Honor, with respect to Count Seven,
 25 it is alleged that on June 22, 2004, Mr. Trosten sent an

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1 e-mail.

2 With respect to Count Fifteen, the bank fraud charge,
 3 your Honor, there are three elements: first, that there was a
 4 scheme to defraud a bank by means of materially false or
 5 fraudulent pretenses, representations, or promises; second,
 6 that Mr. Trosten executed or attempted to execute the scheme
 7 with intent to defraud the bank; and, third, that at the time
 8 of the execution of the scheme, the bank had its deposits
 9 insured by the Federal Deposit Insurance Corporation.

10 At this time, your Honor, the government would proffer
 11 and represent that HSBC, which is identified in the indictment,
 12 has its deposits, and had its deposits at the relevant period,
 13 insured by the Federal Deposit Insurance Corporation.

14 Finally, your Honor, with respect to Count Seventeen,
 15 the money laundering count, there are three elements: first,
 16 that Mr. Trosten engaged or attempted to engage in monetary
 17 transactions involving criminally derived property of a value
 18 greater than \$10,000; second, that the property involved in the
 19 monetary transaction, or attempted transaction, was in fact
 20 derived from specified unlawful activity; finally, that
 21 Mr. Trosten acted knowingly. And with respect to this count,
 22 the specified unlawful activities are the wire fraud, bank
 23 fraud, and securities fraud otherwise charged.

24 THE COURT: Mr. Trosten, do you understand that if you
 25 pled not guilty and went to trial, that the burden would be on

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1 the government to prove each and every element of the crimes
2 charged beyond a reasonable doubt in order to convict you?
3 THE DEFENDANT: Yes, your Honor.
4 THE COURT: Do you understand that at a trial, you
5 would have the right to be represented by an attorney at all
6 stages of the proceeding and if necessary an attorney would be
7 appointed for you?
8 THE DEFENDANT: I do, your Honor.
9 THE COURT: Do you understand that at a trial you
10 would have the right to confront and cross-examine witnesses
11 against you and the right not to be compelled to incriminate
12 yourself?
13 THE DEFENDANT: Yes, your Honor.
14 THE COURT: And do you understand that at a trial you
15 would be presumed innocent until such time, if ever, the
16 government established your guilt by competent evidence to the
17 satisfaction of the trier of fact beyond a reasonable doubt?
18 THE DEFENDANT: I do, your Honor.
19 THE COURT: And do you understand that at a trial, you
20 would have the right to testify and would also be entitled to
21 compulsory process, in other words, the right to call other
22 witnesses on your behalf?
23 THE DEFENDANT: I do, your Honor.
24 THE COURT: And do you understand that if your plea is
25 accepted, that there will be no further trial of any kind, so
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1 that by pleading guilty, you are waiving your right to a trial?
2 THE DEFENDANT: I do.
3 THE COURT: Do you understand that if you are
4 sentenced to a period of supervised release and if you violate
5 the terms of your supervised release, that an additional period
6 of jail time may be imposed without credit for the time that
7 you had previously spent on supervised release?
8 THE DEFENDANT: I do.
9 THE COURT: And do you understand that in connection
10 with your plea of guilty, that the Court may ask you certain
11 questions about the offense to which you have pled, and if you
12 answer those questions under oath and on the record and in the
13 presence of your lawyer, that your answers if false may later
14 be used against you in a prosecution for perjury or false
15 statement?
16 THE DEFENDANT: I do, your Honor.
17 THE COURT: And do you understand that, in determining
18 your sentence, that the Court is obligated to calculate the
19 applicable sentencing guidelines range and to consider that
20 range and possible departures under the guidelines, as well as
21 other factors concerning the nature and circumstance of the
22 offense and the history and characteristics of the defendant?
23 THE DEFENDANT: I do, your Honor.
24 THE COURT: Mr. Trosten, did you sign a plea agreement
25 earlier today?

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1 THE DEFENDANT: I did, your Honor.
2 THE COURT: And before you signed it, did you discuss
3 it with your lawyers?
4 THE DEFENDANT: I did.
5 THE COURT: And before you signed it, did you read it?

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6 THE DEFENDANT: I did, your Honor.
7 THE COURT: Let's just put the plea agreement to one
8 side for a moment. Apart from the plea agreement, have any
9 threats or promises been made to you to make you plead guilty?
10 THE DEFENDANT: No, your Honor.
11 THE COURT: Again, apart from the plea agreement, have
12 any understandings or promises been made to you concerning the
13 sentence that you will receive?
14 THE DEFENDANT: No, your Honor.
15 THE COURT: Is your plea voluntary?
16 THE DEFENDANT: Yes, it is.
17 THE COURT: I would like to review a few portions of
18 the plea agreement with you. Do you understand that pursuant
19 to this plea agreement, that you have undertaken to truthfully
20 and completely disclose all information about yourself and
21 others as required of you by the U.S. Attorney's Office; and
22 that you have agreed to fully cooperate with the U.S.
23 Attorney's Office, the United States Postal Inspection Service,
24 the Securities and Exchange Commission, and any other law
25 enforcement agency designated by the Office; that you have
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1 agreed to attend all meetings as your presence is requested,
2 and to provide to the U.S. Attorney's Office any document or
3 other tangible evidence relating to any inquiry from the U.S.
4 Attorney's Office or other law enforcement agencies; that you
5 have agreed to truthfully testify before the grand jury and at
6 any other trial or court proceeding; that you have agreed to
7 fully disclose to the U.S. Attorney's Office any crimes that
8 you have committed and any civil or criminal proceedings in
9 which you have been or are a subject target or a witness; and
10 that you have further agreed to commit no further crimes
11 whatsoever?
12 THE DEFENDANT: Yes, your Honor.
13 THE COURT: And do you understand that the U.S.
14 Attorney's Office has no authority to agree not to prosecute
15 you for any possible criminal tax violations?
16 THE DEFENDANT: I do, your Honor.
17 THE COURT: And do you understand that if you fully
18 comply with this agreement, that you will not be further
19 prosecuted by the U.S. Attorney's Office for any crime related
20 to your participation in the crimes described in the
21 indictment, Counts One, Two, Seven, Fifteen, and Seventeen,
22 except for a possible criminal tax violation?
23 THE DEFENDANT: Yes, your Honor.
24 THE COURT: And are you aware that this agreement
25 doesn't bind any other federal, state, or local prosecuting
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office?

1 THE DEFENDANT: Yes, your Honor.
2 THE COURT: And do you understand further that the
3 sentence that you will receive is within the sole discretion of
4 the Court?
5 THE DEFENDANT: Yes, your Honor, I do.
6 THE COURT: And do you understand that if the United
7 States Attorney's Office determines that you have provided
8 substantial assistance in an investigation or prosecution and
9 fully complied with the understandings specified in this plea
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11 agreement, that the U.S. Attorney's Office will file a motion
 12 pursuant to Section 5K1.1 of the guidelines, requesting that
 13 you be sentenced in accordance with the factors set forth in
 14 that section?
 15 THE DEFENDANT: I do, your Honor.
 16 THE COURT: And do you understand that even if the
 17 U.S. Attorney makes such a motion, that the issue of sentencing
 18 remains within the discretion of the Court?
 19 THE DEFENDANT: I do.
 20 THE COURT: And do you understand that if the U.S.
 21 Attorney's Office determines that you have not provided
 22 substantial assistance, that they are released of any
 23 obligation to file a 5K1.1 letter?
 24 THE DEFENDANT: I do, your Honor.
 25 THE COURT: And do you understand that, should you
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1 commit any further crimes or should it be determined that you
 2 have given false, incomplete, or misleading testimony or
 3 information, that you are thereafter subject to prosecution for
 4 additional federal crimes?
 5 THE DEFENDANT: I do, your Honor.
 6 THE COURT: Do you understand that if it is determined
 7 that you have committed further crimes or given false or
 8 misleading testimony or otherwise violated this agreement, that
 9 all statements made by you to the United States Attorney's
 10 Office can be used against you in a subsequent prosecution?
 11 THE DEFENDANT: Yes, your Honor.
 12 THE COURT: And are you entering this plea because you
 13 are in fact guilty?
 14 THE DEFENDANT: I am, your Honor.
 15 THE COURT: And do you understand that as part of this
 16 plea agreement, that you are waiving any right you might have
 17 to have the government preserve any physical evidence for
 18 future DNA testing or any right you might have for DNA testing
 19 at the present time?
 20 THE DEFENDANT: Yes, your Honor.
 21 THE COURT: And do you understand that this agreement
 22 takes the place of any prior understanding that you may have
 23 reached with the United States Attorney's Office and that there
 24 are no conditions beyond those set forth in this written
 25 agreement and that there cannot be any additional
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1 understandings that are not entered into in writing and signed?
 2 THE DEFENDANT: Yes, your Honor.
 3 THE COURT: Mr. Trosten, did you commit the offenses
 4 that you are pleading guilty to?
 5 THE DEFENDANT: I did, your Honor.
 6 THE COURT: Would you tell me, please, what you did.
 7 THE DEFENDANT: Your Honor, first, I just would like
 8 to state for the record that, when I said I felt great, it was
 9 relating to medicines that I had taken, as opposed to feeling
 10 ill because of those medicines, not because of my conduct,
 11 which I deeply regret, your Honor.
 12 THE COURT: I would just like -- are you under the
 13 influence of any medicine today?
 14 THE DEFENDANT: I am not, no. No.
 15 THE COURT: OK. And you have not had any trouble
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16 following any of the questions I have asked you?

17 THE DEFENDANT: No, I have not. No, I have not.

18 Your Honor, while I was employed at Refco, I agreed
19 with other Refco executives to hide the true nature of Refco's
20 finances on Refco's financial statements. I knew that Refco's
21 financial statements did not accurately reflect Refco's
22 financial condition, because the financial statements did not
23 disclose the full amount that Refco Group Holdings, Inc., a
24 related party, owed to Refco. I understood that the RGHI
25 receivable was underreported because Philip Bennett, Refco's

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1 former chief executive officer, and other Refco executives,
2 including me, were involved in a series of transactions at the
3 end of Refco's financial reporting periods to make it appear as
4 if a receivable was due from third-party customers rather than
5 from a related party.

6 The RGHI receivable was composed of, amongst other
7 things, historic customer losses, bad debts, and expenses that
8 RGHI incurred on behalf of Refco.

9 In addition, I participated in a number of
10 transactions that padded or inflated Refco's income. For
11 example, I participated in transactions that shifted expenses
12 off the books of Refco and onto the books of Refco Group
13 Holdings, Inc.

14 I, along with other Refco executives, agreed to
15 conceal the true size and nature of the RGHI receivable from,
16 amongst others, Refco's auditors, Thomas H. Lee Partners; HSBC,
17 which, in 2004, participated in Refco's senior secured credit
18 facility, as referenced in paragraph 14 -- I'm sorry --
19 paragraph 41 and Count Fifteen of the indictment; and investors
20 who purchased bonds that Refco issued in 2004, as referenced in
21 Count Two of the indictment.

22 I left the company in August of 2004, one year before
23 the IPO of Refco. I and other Refco executives used the
24 interstate wires to accomplish these acts within this district,
25 as referenced in Count Seven of the indictment.

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1 Furthermore, I received funds obtained from the
2 transaction with Thomas H. Lee Partners, referenced in
3 paragraph 34 of the indictment, which I knew were proceeds from
4 unlawful activity, as referenced in Count Seventeen.

5 The RGHI receivable and the transactions used to
6 conceal it were material information that Refco investors and
7 lenders would have wanted to know before investing in or
8 lending money to Refco.

9 I knew that obtaining funds from Refco investors and
10 lenders based on misleading financial information was wrong.

11 Excuse me.

12 Your Honor, I take full responsibility for my actions
13 and my conduct.

14 I wish to apologize to my family and those that I
15 harmed by my conduct, which I deeply and sincerely regret, your
16 Honor.

17 Thank you.

18 THE COURT: Mr. Garcia, is there anything else that
19 you wish me to ask Mr. Trosten?

20 MR. GARCIA: No, your Honor.

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21 THE COURT: Mr. Trosten, do you still wish to plead
22 guilty?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: Mr. Morvillo, do you know of any reason
25 that Mr. Trosten ought not to plead guilty?

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1 MR. R. MORVILLO: I do not, your Honor.

2 THE COURT: All right. Mr. Trosten, I am satisfied
3 that you understand the nature of the charge against you and
4 the consequences of your plea, and that your plea is made
5 voluntarily and knowingly, and that there is a factual basis
6 for your plea. I will therefore accept your plea of guilty.

7 Mr. Garcia, do you want to give me a control date?

8 MR. GARCIA: Your Honor, respectfully, the government
9 would request about a year for a control date.

10 THE COURT: Let's just see if -- OK. Well, February
11 20, 2009 is a Friday. So you can write to me then.

12 All right. Is there anything else at this time?

13 MR. GARCIA: Nothing more, your Honor, from the
14 government.

15 THE COURT: Mr. Morvillo?

16 MR. R. MORVILLO: Nothing, your Honor. Thank you for
17 accommodating my schedule by sitting as late as you are.

18 THE COURT: We're always here at this time.

19 MR. GARCIA: Thank you, Judge.

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